

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.
(IN TWO VOLUMES.)

PRESIDIO MINING COMPANY, a Corporation,
WM. S. NOYES, B. S. NOYES, L. OSBORN,
JOHN W. F. PEAT, and L. M. DOHERTY,
Appellants,
vs.

W. S. OVERTON and CARL A. MARTIN,
Appellees.

VOLUME II.
(Pages 293 to 558, Inclusive.)

Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,
Southern Division.

FILED

AUG 10 1922

F. D. MONCKTON,

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(IN TWO VOLUMES.)

PRESIDIO MINING COMPANY, a Corporation,
WM. S. NOYES, B. S. NOYES, L. OSBORN,
JOHN W. F. PEAT, and L. M. DOHERTY,
Appellants,

vs.

W. S. OVERTON and CARL A. MARTIN,
Appellees.

VOLUME II.
(Pages 293 to 568, Inclusive.)

Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,
Southern Division.

properly or legally payable out of, or deductible from, the funds of the defendant, Presidio Mining Company. [229]

WHEREFORE this defendant prays that the said sums hereinbefore referred to, be deducted from the operation and administration expenses of the defendant, Presidio Mining Company, and be not allowed, and that no fees be allowed for said Receiver, either for himself or his attorney, otherwise than to be paid by the Complainants herein.

Respectfully submitted,

PRESIDIO MINING COMPANY, a Corporation,

WM. S. NOYES,
B. S. NOYES,
L. OSBORN,
JOHN W. F. PEAT and
L. M. DOHERTY,

Defendants.

By R. T. HARDING and
HENRY E. MONROE,
Their Solicitors.

J. J. DUNNE,
Of Counsel.

Due service and receipt of a copy of the within defendants' objections to receivers' second report, is hereby admitted this 22d day of December, 1919.

FRANK R. WEHE,
Attorney for Receiver.

[Endorsed]: Filed Dec. 22, 1919. Walter B. Maling, Clerk. [230]

(Title of Court and Cause.)

**Order Confirming Second Report and Account of
Receiver and Allowing Compensation to Said
Receiver and His Attorney.**

Walter B. Maling, Receiver herein, having heretofore presented his second report and account of his receivership covering the period from the end of his first account, October 31st, 1918, to and including October 31st, 1919, and also having applied therein for compensation for himself and his attorney Frank R. Wehe, for the calendar year 1919; and the matter duly coming on to be heard on this day on the objections to said account made by defendants herein, and all of said parties being present at said hearing represented by their counsel, and said objections having been fully considered by the Court; and it appearing to the Court that said accounts are correct and that said Receiver has fully obeyed all of the orders of the Court to him issued, has fully accounted for all of his receipts and disbursements during said period covered by said account, and that the sum of Five Thousand (5000) Dollars is a reasonable sum to be allowed said Receiver for compensation during the period from the 31st day of December, one thousand nine hundred and eighteen (1918), to and including the 31st day of December, one thousand nine hundred and nineteen (1919), and a like sum of Five Thousand (5000) Dollars is a reasonable fee to be allowed the said attorney of said Receiver for the same period;

IT IS NOW THEREFORE ORDERED that all acts and things done by said Receiver, as well as his said accounts herein, be and they are hereby approved and confirmed, and that he be allowed as [231] compensation for himself the said sum of Five Thousand (5000) Dollars, and that the said attorney for the said Receiver be allowed as his fee as attorney for said Receiver a like sum of Five Thousand (5000) Dollars, both to be in full for all services rendered in this matter by said Receiver and his said attorney during said period of one (1) year, and that said Receiver be and he is hereby authorized to pay both of said sums from the funds of said trust now in his hands.

Done in open Court this 6th day of January, One thousand nine hundred and twenty (1920).

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Jan. 6, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [232]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

IN EQUITY—No. 196.

W. S. OVERTON and CARL A. MARTIN,
Complainants,
vs.

PRESIDIO MINING COMPANY, a Corporation,
WM. S. NOYES, B. S. NOYES, L. OS-
BORN, JOHN W. F. PEAT, and L. M.
DOHERTY,
Defendants.

Third Report of Receiver.

Walter B. Maling, Receiver herein, presents this as the third report of his receivership.

1. That he filed his first report therein on the 30th day of November, 1918, with a financial statement and report therein from the date of his appointment to the 31st day of October, 1918. That on or about the 10th day of December, 1919, he filed his second report and account herein for the period covering the time from the 1st day of November, 1918, to the 31st day of October, 1919, inclusive, and that he now renders this report and account of his receivership for the period covering the time from 1st day of November, 1919, to the 31st day of October, 1920, inclusive.

2. That during all of the time covered by this report he has continued in possession of and in

charge of the property of the Presidio Mining Company and has continued to operate the mining claims of said Company at Shafter, Presidio County, Texas. [233]

3. That during all of the time of his receivership he has to the best of his ability conducted and managed the said trust in good faith as economically as conditions would permit and for the best interests of the parties to said action, and as ordered by the Court.

4. That he has continued as his representative at the Mine and in charge of the operations thereof in Texas Mr. F. C. Handy, as manager, and has employed at the mine in charge of its various departments skilled men, experienced in the line of work of which each was respectively in charge.

5. That weekly and monthly reports of the operations of the mine have been sent to the Company's office in this city, and the same have been filed and kept open to the inspection of all of the parties to said action, and that all of the operations at said property and all of the business and proceedings of said receivership have been recorded in said office, and kept in such shape as to be open to inspection and information of all parties of said action.

6. That full accounts of the receipts and disbursements of the Receiver are kept at the office of the Company in the Balboa Building, this city, with vouchers for all expenditures, which are open to the inspection of the parties.

7. That during a large portion of the year, and commencing about August 14th, 1920, the weather in Shafter County and in the vicinity of the mine, and covering all of the district, which includes the wagon roads over which the supplies of the Company are conveyed, has been unusually bad, with heavy rains and high winds, to the extent that many times since that date the roads have been almost impassable for quite long periods, and the unbridged watercourses flooded to the extent that they could not be crossed, which delayed the work some as regards the moving of supplies. [234]

8. That the labor conditions at the mine have been unusual owing largely to the unsettled conditions in Mexico, and also owing to the fact that many of the laborers at the mine, who are Mexicans, have been prompted to seek other fields of labor owing to the larger wages paid, notwithstanding that your receiver felt obligated in the month of November last year to raise the wages of nearly all of the employees at the mine for the second time during his receivership. This raise was made necessary by the high cost of living. Also the cost of all supplies, including fuel oil, gasoline, coal oil, castings, hauling and freight charges, have been largely increased. However, notwithstanding all increases in cost of labor and supplies, the management has been able to keep the cost per ton of mining and milling the ore down to about the same figures as in 1919.

Financial Statement.

That there was on hand on October 31st, 1919, as a balance in cash on hand at the date of the last report, the sum of \$157,872.69, deposited in the following banks:

Mercantile National Bank, San Francisco	\$ 76,399.93
Bullion in Transit (subsequently cash)	50,898.71
Marfa National Bank (checking account)	13,986.40
Marfa National Bank (special account)	16,236.48
Anglo & London Paris National Bank	351.17

Total cash on hand \$157,872.69

There was also on hand at said time, invested in Liberty Loan Bonds, War Savings Stamps, and Treasury Certificates, the sum of \$275,889.48

[235]

That during the past year your Receiver has purchased the following securities:
1919.

Dec. 1—U. S. A. Certificates of Indebtedness, bearing $4\frac{1}{4}\%$ interest \$100,000.00
1920.

Feb. 4—U. S. A. Certificates of Indebtedness, bearing $4\frac{1}{2}\%$ interest 70,000.00

Feb. 17—U. S. A. Certificates of Indebtedness, bearing $4\frac{1}{2}\%$ interest 15,000.00

Accrued interest on above from Feb.

2 to Feb. 17 27.66

Apr. 1—U. S. A. Certificates of Indebtedness, bearing $4\frac{3}{4}\%$ interest	170,000.00
July 15—U. S. A. Certificates of Indebtedness, bearing $5\frac{3}{4}\%$ interest	220,000.00

Total	\$575,027.66
-------------	--------------

Of the above securities the following were redeemed by the Government and the cash received by the Receiver:

1919.

Dec. 16—U. S. A. Certificates bought July 11, 1919, and bearing interest @ $4\frac{1}{2}\%$	\$ 45,055.48
---	--------------

1920.

Mar. 15—U. S. A. Certificates of Indebtedness bought Feb. 4 and 17, 1920, and accrued interest on same	185,027.66
July 1—U. S. A. Certificates of Indebtedness bought Apr. 1, 1920	170,000.00

Total	\$400,083.14
-------------	--------------

That the total amount of securities purchased between November 1, 1919, and October 31, 1920, was the sum of.. \$575,027.66

That the total amount redeemed during said period was the sum of 400,083.14

Leaving a balance of purchased securities over and above redeemed securities of \$174,944.52

Receipts from November 1st, 1919, to October 31st,
1920, Inclusive.

Bullion Receipts:

1919.

Nov. 30 \$56,032.99

Dec. 31 58,385.71

1920

Jan. 31 55,330.23

Feb. 28 51,219.20

Mch. 31 55,170.12

Apr. 30 50,735.96

May 31 44,806.17

June 30 40,319.37

July 31 40,404.56

Aug. 31 39,507.52

Sept. 30 39,555.34

Oct. 31 \$40,521.15 \$571,988.32

Scrap Iron and Other Ore Sales:

1920.

Jan. 31 2,765.74

Feb. 28 755.14 3,520.88

Miscellaneous Receipts at Mine:

1919.

Nov. 30 27.25

Dec. 31 65.20

1920.

Jan. 31 90.00

Feb. 28 3.00

Mar. 31 95.50

Apr. 30 57.05

May 31 68.25

302 *Presidio Mining Company et al. vs.*

June 30	26.00	
July 31	195.67	
Aug. 31	42.35	
Sept. 30	39.97	
Oct. 31	8.55	718.79

Interest on United States Securities and Bank Balances:

1919.

Nov. 30	692.87	
Dec. 31	3,126.37	

1920.

Jan. 31	114.65	
Feb. 28	1,151.45	
Mar. 31	2,355.34	
Apr. 30	1,562.73	
May 31	671.40	
June 30	2,040.30	
July 31	2,274.12	
Aug. 31	443.95	
Sept. 30	1,406.68	
Oct. 31	1,514.29	17,354.15

Amt. Carried Forward \$593,582.14

[237]

Amount brought forward\$593,582.14

U. S. A. Certificates:

1919.

Dec. 31	\$45,055.48	
---------------	-------------	--

1920.

Mch. 31	185,027.66	
July 31	170,000.00	400,083.14

San Francisco Miscellaneous:

1919

Mch. 31.....100.00

\$993,765.28

TOTAL RECEIPTS.

1919

Nov. 30\$56,753.11

Dec. 31106,632.76

1920

Jan. 31 58,300.62

Feb. 28 53,128.79

Mar. 31242,748.62

Apr. 30 52,355.74

May 31 45,545.82

June 30 42,385.67

July 31 212,874.35

Aug. 31 39,993.82

Sept. 30 41,001.99

Oct. 30 42,043.99

\$993,765.28

Disbursements from November 1st, 1919, to October 31st, 1920, Inclusive.

Statement of expense of operation paid at San Francisco at the office of the Presidio Mining Company, being the monthly expense of maintaining the office, clerk help, and including salary of the manager at Shafter:

1919

Nov. 30 \$592.05

Dec. 31 635.55

1920

Jan. 31	.....	685.00	
Feb. 29	.....	621.95	
Mar. 31	.....	755.76	
Apr. 30	.....	618.15	
May 31	.....	623.15	
June 30	.....	618.10	
July 31	.....	709.85	
Aug. 31	.....	618.25	
Sept. 30	.....	626.95	
Oct. 31	.....	621.45	\$7,726.21

Amt. carried forward..... \$7,726.21

[238]

Amt. Brought forward\$7,726.21

Statement of Mine disbursements, including operating and supply costs at Shafter, Texas, excluding the salary and expenses of the manager:

1919

Nov. 30	.....	\$25,762.50
Dec. 31	.....	29,683.37

1920

Jan. 31	.....	29,124.91	
Feb. 29	.....	28,734.30	
Mar. 31	.....	27,151.69	
Apr. 30	.....	28,705.53	
May 31	.....	30,166.32	
June 30	.....	25,938.41	
July 31	.....	27,050.57	
Aug. 31	.....	25,999.14	
Sept. 30	.....	29,153.50	
Oct. 31	.....	26,155.82	333,626.06

Statement of fees and expenses of the Receiver
for the period October 31st, 1918, to October
31st, 1919, paid in January 1920, on order of
the Court:

1920

Jan. 31	\$10,000.00	
Mch. 31 premium on bond of Receiver	50.00	10,050.00
<hr/>		

Statement of Income Tax Payments:

1919

Dec. 31\$26,043.89

1920

Mch. 31	16,754.58	
June 30	16,754.57	
Sept. 30	16,754.58	76,307.62

Purchase of U. S. A. Certificates:

1919

Dec. 31 \$100,000.00

1920

Feb. 29	85,027.66	
Apr. 30	170,000.00	
July 31	220,000.00	575,027.66

Statement of Costs of Auditor:

1919

Nov. 30' \$505.00

1920

Sept. 30	125.00	630.00
----------------	--------	--------

Amt. carried forward\$1,003,367.55

Amt. brought forward . . . \$1,003,367.55

Statement of Accrued interest costs on
purchase of Government securities:

1920

Jan. 31 \$41.80	41.80
---------	-------------------	-------

\$1,003,409.35

TOTAL DISBURSEMENTS.

1919

Nov. 30 \$26,859.55	
---------	-----------------------	--

Dec. 31 156,362.81	
---------	----------------------	--

1920

Jan. 31 39,851.71	
---------	---------------------	--

Feb. 29 114,383.91	
---------	----------------------	--

Mch. 31 44,712.03	
---------	---------------------	--

Apr. 30 199,323.68	
---------	----------------------	--

May 31 30,789.47	
--------	---------------------	--

June 30 43,311.08	
---------	---------------------	--

July 31 247,760.42	
---------	----------------------	--

Aug. 31 26,617.39	
---------	---------------------	--

Sept. 30 46,660.03	
----------	---------------------	--

Oct. 31 26,777.27	
---------	---------------------	--

\$1,003,409.35

SUMMARY OF RECEIPTS AND DISBURSEMENTS.

Receipts.

Bullion Receipts	\$571,988.32
----------------------------	--------------

S. F. Miscellaneous	100.00
-------------------------------	--------

Scrap Iron and Ore Sales ..	3,520.88
-----------------------------	----------

Mine—Miscellaneous	718.79
------------------------------	--------

Interest Earned	17,354.15	
U. S. A. Certificates	400,083.14	\$993,765.28

Total funds on hand October 31st, 1919. 157,872.69

\$1,151,637.97

Disbursements.

Paid at San Francisco.....\$	7,726.21	
Mine Operating Expenses ..	333,626.06	
Receivership Fees, etc.	10,050.00	
Taxes, Income	76,307.62	
U. S. A. Certificates	575,027.66	
Auditing	630.00	
Bond Interest	41.80	1,003,409.35

Balance cash on hand 148,228.62

[240]

Deposited in Banks as follows:

Mercantile National Bank, S. F.....	\$79,308.82
Bullion in Transit (subsequently cash)	40,521.15
Marfa National Bank (checking ac- count)	11,155.06
Marfa National Bank (Special ac- count)	16,892.42
Anglo & London Paris Nat'l Bank....	351.17

\$148,228.62

Total securities on hand\$450,834.00

Total balance cash on hand148,228.62

Total cash and securities on hand \$599,062.62

IMPROVEMENTS.

During the year covered by this report the following principal improvements have been made at the works and mine:

At the mill to take place of the old oil storage tanks, which were rusted and practically useless and which were buried in the ground, there has been installed above the ground and so that the oil is transmitted to the mill by gravity two new tanks with 1000 bbl. capacity. These tanks are situated on concrete foundations and are so situated that one can be in use and the other empty for the purpose of cleaning the same, or both can be filled and used for storage in case it is necessary.

Total cost, tanks, foundation, piping, labor, etc.

..... \$3,264.89

At the pump plant, an auxiliary triplex pump of extra heavy construction, with counter shaft, pulleys, and an extension to the pump-house. This extra pump was necessary on account of the removal and abandonment of steam boilers, the auxiliary pump being a steam pump which was abandoned when the new de la Vergne engine was installed last year.

Total cost\$2,237.44

[241]

Two new wire cables were installed at the East Shaft Hoist, each 1000 feet long.

Total cost..... \$1000

On Engine D-204 a new governor and equipment

was added, to make the engine identical with the other two engines.

Total cost..... \$600

At the tool sharpening forge, an additional oil storage tank was installed, doubling the storage capacity.

No separate cost kept.

At the East Shaft two oil storage tanks, with piping and burner were installed to fire the steam boiler, should it be necessary at any time to run the hoist with steam. This boiler had heretofore been run with wood, but on account of the scarcity of wood the change was necessary.

Cost appears in operating expenses.

A small lighting plant was installed at the mine for the purpose of lighting the Mina Grande Tunnel, South Shaft Hoist, and the Mine offices and cottages. These places are situated a long distance from the mill and it was deemed cheaper and safer to light with electricity.

Total cost, including storage batteries....\$650.00.

Most of the buildings at the works have been painted during the past year, including roof and woodwork of mill buildings, machine-shop, store-room, etc., and also at the mine the roofs of the power-house and all woodwork, shops, South Shaft Hoist, forge, mine office buildings, etc. Also considerable work in the way of repairs of the adobe houses occupied by the Mexicans and located on the Company lands, [242] damaged by the storms during this fall, has been done.

INCREASED WAGES OF WORKMEN.

In the month of November the situation at the Mine became critical on account of the loss of workmen and discontent with the then going wages. The result was such that it jeopardized the running of the plant, whereupon your Receiver, with the consent of the parties to the action, authorized another raise in wages similar to the raise reported at the first report. This raise applied only to the labor subordinate to the manager, the manager's wages not being raised, and while it varies from month to month owing to the number of men employed, it averaged during the year somewhere between \$1200 and \$1700 per month.

Your Receiver further reports that the fees of himself and attorney have been paid to the 31st day of December, 1919; that neither have received any fees whatever for the year 1920. That the latest Act of Congress passed as a war measure with reference to Income Tax on corporations is still in force, but it is rumored that the same may be reduced for the next year. Hence it is proper that in making out the Income Tax statement covering this year's income that all of the costs of the receivership of this year should be paid so as to make the same a deduction on the Income Tax statement for the fiscal year 1920, and it is therefore advisable that the Court fix the fees of the Receiver for himself and his attorney for the year 1920, it being the habit to have a proportionate share of the fees for each fiscal year paid during that year.

WHEREFORE your Receiver prays that said report and account be approved, and that the fees of himself and his [243] attorney be fixed by the Court and ordered paid from the funds on hand.

Respectfully submitted,

WALTER B. MALING,

Receiver.

FRANK. R. WEHE,

Attorney.

[Endorsed]: Filed Nov. 30, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [244]

(Title of Court and Cause.)

In the District Court of the United States, for the Western District of Texas, at El Paso.

AUXILIARY SUIT.

No. 114—EQUITY.

W. S. OVERTON and CARL A. MARTIN,
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,
WM. S. NOYES, B. S. NOYES, L. OS-
BORN, JOHN W. F. PEAT, and L. M.
DOHERTY,

Defendants.

Objections of Defendants to the Allowance of and to Settlement of Receiver's Account.

Walter B. Maling, Receiver herein, having filed in said Court first above mentioned his report and account of his proceedings as such Receiver from the 1st day of November, 1919, to the 31st day of October, 1920, inclusive, and also having therein asked said Court for an allowance to himself and his attorney, Frank R. Wehe, Esq., on account of their services as such Receiver and attorney herein, covering the calendar year one thousand nine hundred and twenty, in order that the expenses of the receivership may be treated as deductions from the net income of said receivership during said fiscal year;

Now comes the defendants in the above-entitled cause, and object to the settlement of said account, and hereby reserve to themselves the right at all future times, to object to any and all of the actions and proceedings of said Receiver, and to insist in all proper places and at all proper times upon their said objections, and upon objections heretofore made, to the appointment of said, or any, Receiver, and/or upon any proceedings based upon said, or similar, objections that said defendants, [245] or any of them, heretofore have made, or may hereafter be submitted:

Said defendants concede that if said receivership is proper, and said Receiver was legally and properly appointed, that then the sum of Ten Thou-

sand (10,000) Dollars is a reasonable sum to be allowed to said Receiver (Five Thousand (5,000) Dollars for himself and Five Thousand (5,000) Dollars for his attorney), covering the full fiscal year of One Thousand Nine Hundred and Twenty;

As to the allowance of said account, and as to the allowance to said Receiver and his said attorney, these defendants further state that said defendants claim that in the event the order appointing said Receiver is reversed by the United States Circuit Court of Appeals, that then said Receiver must redeliver the property of the defendant, Presidio Mining Company, to it without deduction;

And the defendants now make the further specific objection to said account, that the sum of Fourteen Hundred and Seventy-five (1475) Dollars paid to Florence M. Handy, the bookkeeper of said Receiver, and the sum of Five Thousand Four Hundred (5400) Dollars paid to F. C. Handy, the representative of the Receiver at the mine, are erroneously included in the statement of expenses of operation, on page six (6) of said report, but that they are in fact expenses of the receivership, and would not have been incurred or paid, except for the said receivership.

Dated this 4th day of December, One Thousand Nine Hundred and Twenty (1920).

R. T. HARDING and
HENRY E. MUNROE,

Attorneys and Solicitors for said Defendants.

[Endorsed]: Filed Dec. 4, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [246]

(Title of Court and Cause.)

Order Confirming Third Report and Account of Receiver and Allowing Compensation to said Receiver and His Attorney.

Walter B. Maling, Receiver herein, having heretofore presented his third report and account of his receivership covering the period from the end of his second account, October 31st, 1919, to and including the 31st day of October, 1920, and also having applied therein for compensation for himself and his attorney, Frank R. Wehe, for the calendar year 1920; and the matter duly coming on to be heard on this day on the objections to said account made by defendants herein, and all of said parties being present at said hearing represented by their counsel, and said objections having been fully considered by the Court; and it appearing to the Court that said accounts are correct and that said Receiver has fully obeyed all of the orders of the Court to him issued, has fully accounted for all of his receipts and disbursements during said period covered by said account, and that the sum of Five Thousand (5000) Dollars is a reasonable sum to be allowed said Receiver for compensation during the period from the 31st of December, one thousand nine hundred and nineteen (1919), to and including the 31st day of December, one thousand nine hundred and twenty (1920), and a like sum of Five Thousand (5000) Dollars is a reasonable fee to be allowed the said attorney of said Receiver for the said period;

IT IS NOW THEREFORE ORDERED that all acts and things done by said Receiver, as well as his said accounts herein, be and they are hereby approved and confirmed, and that he be [247] allowed as compensation for himself the said sum of Five Thousand (5000) Dollars, and that the said attorney for the said Receiver be allowed as his fee as attorney for said Receiver a like sum of Five Thousand (5000) Dollars, both to be in full for all services rendered in this matter by said Receiver and his said attorney during said period of one (1) year, and that said Receiver be and he is hereby authorized to pay both of said sums from the funds of said trust now in his hands.

Done in open court this 4th day of December, one thousand nine hundred and twenty (1920).

FRANK H. RUDKIN,
Judge.

[Endorsed]: Filed Dec. 4, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [248]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 196—IN EQUITY.

W. S. OVERTON and CARL A. MARTIN,
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,
WM. S. NOYES, B. S. NOYES, L. OS-
BORN, JOHN W. F. PEAT, and L. M.
DOHERTY,

Defendants.

Fourth and Final Report and Account of Receiver.

Walter B. Maling, Receiver herein, presents this his Fourth and Final Report and Account of his receivership:

(1) That he filed his first report and account herein on the 2d day of November, 1918, and on the 28th day of December, 1918, he filed a supplemental report thereto. That said reports contained a financial statement and report of his receivership from the 23d day of February, 1918, the date he took possession of the office of said Presidio Mining Company, to the 31st day of October, 1918. That said report and account and the supplement thereto were duly allowed and confirmed by order of this Court filed in this Court on the 13th day of January, 1919. That on the 10th day of December, 1919, he filed his second report and account herein

for the period covering the time from the 1st day of November, 1918, to the 31st day of October, 1919, both inclusive, and said report and account was duly allowed and confirmed by order of this Court filed herein on January 13th, [249] 1920. That on the 30th day of November, 1920, he filed his third report and account herein for the period covering, the time from the 1st day of November, 1919, to the 31st day of October, 1920, inclusive, and that on the 4th day of December, 1920, said report and account was duly allowed and confirmed by this Court by order filed in this Court on said 4th day of December, 1920.

(2) That on the 6th day of May, one thousand nine hundred and twenty-one (1921), this Court, by order duly entered herein on the same day and directed to your Receiver, ordered that he turn over and deliver to the defendant Presidio Mining Company all of the property of said defendant in his possession or under his control, as such Receiver, except the sum of Five Thousand (5000) Dollars, which was to be retained by him in order to satisfy any balance of commissions and expenses of the Receivership, including attorney fees, which may be allowed him in his final account; that he take from said defendant Presidio Mining Company such receipts and acknowledgments as would evidence the payment and delivery of said property; and that he file herein a report and account of his receivership since his last report and account and present the same to this Court; and also that the Clerk of this Court certify to a copy thereof and cause the same

to be filed with the Clerk of the District Court of the United States for the Western District of Texas, at El Paso, in the Auxiliary Suit of Overton et al. vs. Presidio Mining Company, et al., No. 114 Equity.

(3) That in obedience to the said order of this Court, he immediately caused to be forwarded to the Clerk of the said Court last mentioned a certified copy of the order of this Court last above mentioned, and that on the 10th day of May, one thousand nine hundred and twenty-one (1921), the [250] said District Court of the United States, for the Western District of Texas, at El Paso, in said Auxiliary Suit No. 114 Equity, duly entered its order requiring this Receiver to deliver to said defendant Company all property of said defendant company in his possession or under his control as such Receiver, a certified copy of which order is filed herewith and a true copy thereof annexed hereto and marked Exhibit "A."

(4) That in obedience to said orders your Receiver has performed the following acts:

(a) That on the 6th day of May, one thousand nine hundred and twenty-one (1921), he duly delivered to said defendant Presidio Mining Company all of the property of said Company in his hands in the State of California, except the said sum of Five Thousand (5000) Dollars, which was retained by him for the purposes mentioned in said order, which said property so delivered was as follows:

Check on the Anglo & London, Paris
National Bank of San Francisco, for. \$351.17

Check on the Mercantile Trust Com-
pany of San Francisco, for..... 66,115.33

Liberty Loan Bonds described as follows:

Second 4¼% Bonds (converted) with
coupons #6 and up, 25 bonds @
\$1,000 each numbered as follows: ...
116,483; 116,484; 116,485; 116,486;
990,853; 1196,353; 752,427; 752,428;
752,429; 752,432; 752,433; 752,434;
85,845; 990,477; 1,128,655; 1,128,-
656; 1,128,657; 1,128,658; 1,128,659;
1,121,952, 990,566; 990,567; 990,585;
916,019; 916,020 25,000.00

Third 4¼% Bonds (converted) with
coupons #7 and up, 6 bonds @
\$10,000 each numbered as follows
28,529; 28,530; 26,649; 26,650;
27,284; 27,285 60,000.00
[251]

Fourth 4¼% Bonds, with coupons #6
and up, 7 bonds described as follows:
78,628—1 bond 5,000.00
109,210; 109,211; 109,212;
109,213; 109,214; 109,215;
6 bonds @ \$10,000 each 60,000.00 65,000.00

Victory 4 $\frac{3}{4}$ % bonds, with coupons #4
and up, 80 bonds @ \$1,000 each num-
bered as follows:

1,149,001 to 1,149,080 (inclusive) .. 80,000.00

U. S. A. Certificates of Indebtedness,
Series F-1921, @ 5 $\frac{3}{4}$ % p. a., dated
Jan. 15, 1921, maturing Oct. 15, 1921,
and numbered as follows:

280 to 293 (inclusive),

14 certificates @ \$5000

each 70,000.00

17 and 18, 2 certificates

@ 100,000 each 200,000.00

270,000.00

U. S. A. Certificates of Indebtedness,
Series G-1921 @ 5 $\frac{1}{2}$ % p. a., dated
Feb. 15, 1921, maturing July 15, 1921,
numbered as follows:

6 5,000.00

19 and 20, 2 certfs. @

\$10,000. each, 20,000.00 25,000.00

200 War Savings Stamps of the face

value of 1,000.00

Order upon American Smelters Securities Company
of San Francisco, California, to make remittance
to the Presidio Mining Company for Bars num-
bered 10,325 to 10,334, inclusive, containing ap-
proximately 13,292.22 Fine Ounces of Silver bul-
lion.

(b) That he took therefor the receipt of said Presidio Mining Company, the original of which is filed herewith, and a true copy thereof annexed hereto and marked Exhibit "B."

(c) That under the authorization contained in said order upon the American Smelters Securities Company of San Francisco to make remittances to the Presidio Mining Company for bars numbered 10,325 to 10,334, inclusive, and for other shipments of Ore up to the 9th day of May, One thousand nine hundred and twenty-one (1921), said Securities Company has paid to said Presidio Mining Company sums of money as follows: [252]

For bars numbered 10,325 to 10,334, inclusive, check in the sum of Twelve Thousand Seven Hundred and Forty-nine and 67/100 (12,749.67) Dollars to the order of the Presidio Mining Company on May 17th, 1921; and for bars numbered 10,335 to 10,342, inclusive, checking the sum of Eleven Thousand Three Hundred and Ninety-two and 77/100 (11,392.77) Dollars, to the order of the Presidio Mining Company on May 24th, 1921, for which said Presidio Mining Company has receipted to your Receiver, the original receipt for which is filed herewith, and a true copy thereof is annexed hereto and marked exhibit "C."

(d) That on the 11th day of May, one thousand nine hundred and twenty-one (1921), Fred C. Handy, the representative of your Receiver at Shafter, Texas, under instructions from your Receiver and in obedience to said order of said Texas Court, said exhibit "A" delivered to said Presidio

Mining Company all of the property of said defendant Presidio Mining Company situated in the state of Texas, and then in the possession of your Receiver, taking therefor a receipt for the same, and that said defendant Presidio Mining Company at the same time assumed the payment of all supplies theretofore ordered by your Receiver for the operation of said property and not then paid for, and also assumed the payment of all unpaid labor, and filed herewith is the original of said receipts and authorizations, marked, respectively, Exhibits "D" and "E."

(e) That among the property delivered by your Receiver to said Presidio Mining Company was cash as follows:

Cash balance in Marfa National Bank . \$4,242.66

Cash in Savings Account, Marfa National Bank 17,230.27

With accrued interest from February 1st, 1921, to May 1st, 1921.

[253] Money in office safe at Shafter, as follows:

Coin	\$360.12	
Paid C. O. D. package	1.29	
Paid for postage stamps ...	10.00	\$371.41

That at said time there were also outstanding checks numbers 02668 to 02710, inclusive, the above mentioned checks being as follows:

Al Driffill	\$30.40
E. H. Page	17.60
T. H. Pomeroy	30.50

F. C. Handy	30.50	
H. Bryant	30.50	
E. G. Gleim Co.	3.00	\$142.55

That the receipt therefor is filed herewith and a true copy annexed hereto marked exhibit "F."

That a full inventory of the other property delivered by your Receiver to said defendant Presidio Mining Company is contained in an exhibit mentioned in said receipt exhibit "D" as exhibit "A," the original of which is filed herewith, and a true copy of which is annexed to this report and marked exhibit "G."

(5) That further in obedience to said order of this Court your Receiver herewith reports and accounts as follows:

(6) That during all of the time covered hereby and until the delivery of the possession of said property to said defendant Presidio Mining Company, as aforesaid, he has continued in possession of and in charge of the property of the said defendant Presidio Mining Company and operated the mining claims of said Company at Shafter, Presidio County, Texas.

(7) That during all of the time of his receivership he has to the best of his ability conducted and managed the said trust in good faith as economically as conditions would permit and for the best interests of the parties to said [254] action, and as ordered by the Court.

(8) That he has continued as his representative at the mine and in charge of the operations thereof in Texas Mr. F. C. Handy, as manager, and has em-

ployed at the mine in charge of its various departments skilled men, experienced in the line of work of which each was respectively in charge.

(9) That weekly and monthly reports of the operations at the mine have been sent to the Company's office in this city, and the same have been filed and kept open to the inspection of all the parties of said action, and that all of the operations at said property and all of the business and proceedings of said receivership have been recorded in said office, and kept in such shape as to be open to the inspection and information of all the parties to said action.

(10) That full accounts of the receipts and disbursements of the Receiver are kept at the office of the Company in the Balboa Building, this city, with vouchers for all expenditures, which are open to the inspection of the parties.

(11) That on the 3d day of February, one thousand nine hundred and twenty-one (1921), all of the parties to said action stipulated that your Receiver could donate from the funds of said receivership in his hands the sum of one hundred (100) Dollars to C. C. Broadwater, representing the Committee to Receive Donations from Mining Companies to be paid to the Pacific Branch, European Relief Council for Starving Children of Europe, and thereupon your Receiver paid from the funds of said receivership the said sum of One Hundred (100) Dollars.

(12) That in the month of December, one thousand nine hundred and twenty (1920), by stipulation of all the parties, and upon order of this Court

for the sale thereof, your Receiver [255] duly sold a number of securities in his hands as such Receiver, and that thereafter and during the same month, by stipulation and order of all of the parties to said action, he invested the said funds in other securities, which said securities are accounted for in this account.

(13) That on the 11th day of May, one thousand nine hundred and twenty-one (1921), when the mining property, works, etc., at Shafter were turned over to the defendant Presidio Mining Company, said property was in good order and the mine and reduction works in full operation; that large quantities of milling ore were broken down in the mine, with chutes and ore bins filled, so that said defendant Presidio Mining Company could continue the operations of mining and milling said ore and operating said property without the loss of time or depreciation of the output, all in accordance with good mining methods.

(14) That your Receiver further reports that during the whole time of said receivership the said parties plaintiff and the said defendant Presidio Mining Company, by its principal officers, and the attorneys on both sides have been uniformly courteous, and that all of said parties just mentioned have assisted your Receiver in the performance of his duties, to the end that the successful management of your Receiver of the properties of said defendant Presidio Mining Company is in part due to the said assistance received from said parties. [256]

FINANCIAL STATEMENT.

That there was on hand on October 31st, 1920, as a balance of cash at the date of the last report the sum of \$148,228.62 deposited in the following banks:

Mercantile Trust Co. of S.F. \$79,308.82

Bullion in transit (subsequently cash) 40,521.15

Marfa National Bank (checking account) 11,155.06

Marfa National Bank (special account) 16,892.42

Anglo & London Paris National Bank 351.17

That there was also on hand at said time, invested in Liberty Loan Bonds, War Savings Stamps, and Treasury Certificates, in face value, the sum of. 450,834.00

Total \$599,062.62

RECEIPTS FROM NOVEMBER 1ST, 1920,
TO MAY 6TH, 1921.

Bullion Receipts:

1920.

Nov. 30 \$36,082.93

Dec. 31 41,873.49

1921.

Jan. 31 38,945.19

Feb. 28 39,773.39

Mar. 31 38,611.90

Apr. 30 38,890.64

May 6 11,392.77 \$245,570.31

Miscellaneous Receipts at San Francisco:

1920.

Nov. 30	\$3.50	3.50
---------------	--------	------

Miscellaneous Receipts at Mine:

1920.

Nov. 30	\$57.45	
---------------	---------	--

Dec. 31	56.25	
---------------	-------	--

1921.

Jan. 31	70.80	
---------------	-------	--

Feb. 28	107.00	
---------------	--------	--

Mar. 31	906.82	
---------------	--------	--

Apr. 30	11.10	1,209.42
---------------	-------	----------

[257]

Amt. carried forward	\$246,783.23
----------------------------	--------------

Amt. brought forward	\$246,783.23
----------------------------	--------------

Interest on United States Securities
and Bank Balances:

1920.

Nov. 30	\$682.65
---------------	----------

Dec. 31	3,259.53
---------------	----------

1921.

Jan. 31	6,445.88
---------------	----------

Feb. 28	411.87
---------------	--------

Mar. 31	1,342.29
---------------	----------

Apr. 30	1,466.96	13,609.18
---------------	----------	-----------

U. S. A. Certificates of Indebtedness:

1921.

Jan. 31	\$220,000.00	220,000.00
---------------	--------------	------------

Sale of Liberty Loan Bonds:

1920.

Dec. 31	\$205,786.00	205,786.00
---------------	--------------	------------

\$686,178.41

TOTAL RECEIPTS BY MONTHS.

1920.

Nov. 30	\$36,826.53
---------------	-------------

Dec. 31	250,975.27
---------------	------------

1921.

Jan. 31	265,461.87
---------------	------------

Feb. 28	40,292.26
---------------	-----------

Mar. 31	40,861.01
---------------	-----------

Apr. 30	40,368.70
---------------	-----------

May 6	11,392.77
-------------	-----------

Total\$686,178.41

DISBURSEMENTS FROM NOVEMBER 1ST,
1920, TO MAY 11TH, 1921.

Statement of expense paid at San Francisco at the office of the Presidio Mining Company, being the monthly expense of maintaining the office, clerk help, and including the salary of the manager at Shafter up to April 25, 1921:

1920.

Nov. 30	\$621.05
---------------	----------

Dec. 31	969.02
---------------	--------

1921.

Jan. 31	698.75
---------------	--------

Feb. 28	724.35
---------------	--------

Mar. 31	667.40	
Apr. 30	627.60	
May 11	44.25	\$4,352.42

	<hr/>	<hr/>
Amt. carried forward		\$4,352.42

[258]

Amt. Brought Forward	\$4,352.42
----------------------	------------

Statement of Mine Disbursements,
including Operating and Supply Costs
at Shafter, Texas, excluding salary and
expenses of the manager:

1920.

Nov. 30	\$25,284.44
---------------	-------------

Dec. 31	30,314.26
---------------	-----------

1921.

Jan. 31	32,012.30
---------------	-----------

Feb. 28	29,332.42
---------------	-----------

Mar. 31	28,182.37
---------------	-----------

Apr. 30	30,167.76
---------------	-----------

May 11	2,456.96	177,750.51
--------------	----------	------------

Statement of Income Tax

Payments:

1920.

Dec. 31	\$16,754.57
---------------	-------------

1921.

Mar. 31	5,643.82	22,398.39
---------------	----------	-----------

Purchase of Liberty and
Victory Bonds:

1920.

Dec. 31	\$206,108.56	206,108.56
---------------	--------------	------------

Purchase of United States Certificates of Indebtedness:

1921.

Jan. 31	\$270,000.00	
---------------	--------------	--

Feb. 28	25,000.00	295,000.00
---------------	-----------	------------

Accrued Interest Paid on Purchase of United States Securities:

(a) Liberty and Victory Bonds:

1920.

Dec. 31	\$1186.44	
---------------	-----------	--

(b) United States of America

Certificates of Indebtedness:

1921.

Feb. 28	7.53	1,193.97
---------------	------	----------

Auditing Costs on Preparation of U. S. Income Tax statement for the year 1920:

1921.

Mar. 31	\$100.00	100.00
---------------	----------	--------

Amt. carried forward		\$706,903.85
----------------------	--	--------------

[259]

Amt. brought forward		\$706,903.85
----------------------	--	--------------

Statement of Fees and Expenses of Receiver for the Period of Jan. 1st to Dec. 31st, 1920:

1920.

Dec. 31 \$10,000.00

1921.

Apr. 30 50.00 10,050.00

Total \$716,953.85

TOTAL DISBURSEMENTS BY MONTH.

1920.

Nov. 30 \$ 25,905.49

Dec. 31 265,332.85

1921.

Jan. 31 302,711.05

Feb. 28 55,064.30

Mar. 31 34,593.59

Apr. 30..... 30,845.36

May 11 2,051.21

Total \$716,953.85

SUMMARY OF RECEIPTS AND DISBURSEMENTS.

Receipts.

Cash on hand October 31st, 1920 \$148,228.62

Receipts this account:

Bullion \$245,570.31

San Francisco Miscellaneous 3.50

Mine Miscellaneous 1,209.42

Interest Earnings 13,609.18

U. S. A. Certificates of Indebtedness 220,000.00

Liberty Loan Bonds Sold 205,786.00 \$686,178.41

Total \$834,407.03

(NOTE.—The above sum of total receipts for this account represents bullion in transit and not cash up to May 6th, 1921, and receipted for in Exhibits B and C, in the sum of \$24,142.44.)

Amount carried forward	\$834,407.03
[260]	
Amt. brought forward	\$834,407.03
Disbursements.	
Paid at San Francisco .. \$	4,352.42
Mine Operating Expenses	177,750.51
Taxes—Income	22,398.39
Liberty Loan Bonds	206,108.56
U S. A. Certfs. of Indebtedness	295,000.00
Bond Interest	1,193.97
Auditing	100.00
Receivership Fees	10,050.00
Total	716,953.85
Balance	\$117,453.18
Less bullion mentioned in above note to receipts	24,142.44
Net Balance	\$ 93,310.74
The above balance is represented by cash on hand as follows:	
In Mercantile Trust Co. of San Francisco	\$71,115.33

In Anglo & London Paris	
National Bank	351.17
In Marfa National Bank,	
Special Account	17,230.27
In Marfa National Bank	
Checking Account	4,100.01
Cash in safe at Shafter	371.41
Checks paid out of funds	
in safe	142.55
Total Securities on hand,	
face value	\$526,000.00
	<hr/>
	\$619,310.74

(NOTE.—A full description of the securities is found on pages 3 and 4 of this report and in Exhibit “B.”) [261]

Total securities on hand and cash balance carried over	\$619,310.74
--	--------------

SUMMARY OF FUNDS AND SECURITIES DELIVERED TO PRESIDIO MINING COMPANY, NOT INCLUDING BULLION IN TRANSIT IN AMOUNT OF \$24,142.44, RECEIPTED FOR IN EXHIBITS “B” AND “C.”

Cash in Anglo & London	
Paris National Bank .. \$	351.17
Cash in Mercantile Trust	
Co. of S. F.	66,115.33
Face Amount of United	
States Securities	526,000.00

Cash in Marfa National		
Bank	17,230.27	
Cash in Marfa National		
Bank (Checking Acct.)	4,100.01	
Cash in safe at Shafter ..	371.41	
Checks paid out of funds		
in safe	142.55	
		<hr/>
		614,310.74
		<hr/>
Balance		\$ 5,000.00

That out of said balance on hand of \$5000 your Receiver has expended in expenses of the receivership since May 6th inst., the following sums:

1921.

May 24—To Fred C. Handy,		
salary from Apr. 25 to May		
11	\$300.00	
May 24—Traveling expenses		
of said Handy from Marfa		
to San Francisco	100.00	
May 26—Bookkeeper, salary		
for May	125.00	525.00
	<hr/>	<hr/>
Balance on hand		\$ 4,475.00

(NOTE.—That there is a small balance of interest due from the Mercantile Trust Company, the exact amount of which your Receiver is not now informed, but which will probably amount to the sum of about \$25.)

Your Receiver further reports that the fees of himself and attorney have been paid to the 31st day of December, 1920; that neither have received any fees whatever for the present year.

WHEREFORE your Receiver prays that said report and account be approved and that the fees of himself and his attorney since the 31st day of December, 1920, as such [262] Receiver, and for closing the affairs of said trust as appears by this report be fixed by the Court and ordered paid from the balance of said funds now in his hands.

Respectfully,

WALTER B. MALING,

Receiver.

FRANK R. WEHE,

Attorney. [263]

State of California,

City and County of San Francisco,—ss.

Walter B. Maling, said Receiver, being first duly sworn, deposes and says:

That he has read the foregoing report and account and that the same is true.

WALTER B. MALING.

Subscribed and sworn to before me this 27th day of May, 1921.

[Seal]

RITA JOHNSON,

Notary Public in and for the City and County of San Francisco, State of California. [264]

Exhibit "A."

In the District Court of the United States, for the
Western District of Texas, at El Paso.

AUXILIARY SUIT.

No. 114—EQUITY.

W. S. OVERTON and CARL A. MARTIN,
Complainants,
vs.

PRESIDIO MINING COMPANY, a Corporation,
WM. S. NOYES, B. S. NOYES, L. OS-
BORN, JOHN W. F. PEAT, and L. M.
DOHERTY,

Defendants.

**Auxiliary Order for Receiver to Deliver Property
to Defendant, Presidio Mining Company.**

The Southern Division of the United States District Court for the Northern District of California, Second Division, in the Primary Action of W. S. Overton, et al., vs. Presidio Mining Co., a corp. et al., No. 196—Equity, having entered an order requiring Walter B. Maling, the Receiver therein and herein to deliver to said defendant company all property of said defendant company in his possession or under his control as such receiver, a part of which property is situated in this district, it is hereby likewise ordered that all property of said defendant in this district now in the possession of, or under the control of, said Receiver be forthwith

delivered to said defendant Presidio Mining Company.

Dated this 10th day of May, 1921.

(Signed) W. R. SMITH,
Judge.

[Endorsed]: Filed May 10, 1921. D. H. Hart,
Clerk. By J. N. Phillips, Deputy. [265]

United States of America,
Western District of Texas,—ss.

I, D. H. Hart, Clerk of the United States District Court for the Western District of Texas, do hereby certify that the foregoing is a true and correct copy of the original auxiliary order for receiver to deliver property to defendant Presidio Mining Company, in cause No. 114—Equity, entitled *W. S. Overton et al. vs. Presidio Mining Co., a corp., et al.*, as the same appears on file and of record in this office.

Witness my official signature and the seal of said court affixed at office in the city of El Paso, Texas, this 10th day of May, A. D. 1921.

[Seal] D. H. HART,
Clerk.

By J. N. Phillips,
Deputy. [266]

Exhibit "B."

In the District Court of the United States in and
for the Northern District of California, Second
Division.

No. 196.

W. S. OVERTON and CARL A. MARTIN,
Complainants,

vs.

PRESIDIO MINING COMPANY, et als.,
Defendants.

San Francisco, California, May 6th, 1921.

Received from Walter B. Maling, Receiver of the
Presidio Mining Company, the following property:
Check on the Anglo & London, Paris

National Bank of San Francisco, for..\$ 351.17

Check on the Mercantile Trust Company
of San Francisco, for..... 66,115.33

Liberty Loan Bonds described as fol-
lows: Second 4¼% Bonds (con-
verted) with coupons #6 and up, 25
bonds @ \$1,000 each numbered as
follows:

116483; 116484; 116485; 116486;	
990853; 1196353; 752427; 752428;	
752429; 752432; 752433; 752434;	
85845; 990477; 1128655; 1128656;	
1128657; 1128658; 1128659; 1121952;	
990566; 990567; 990585; 916019;	
916020	25,000.00

Third 41¼% Bonds (converted) with
coupons #7 and up, 6 bonds @ \$10,000
each numbered as follows:
28529; 28530; 26649; 26650; 27284;
27285 60,000.00

[267]

Fourth 41¼% Bonds, with coupons #6
and up, 7 bonds described as follows:
78,628—1 bond 5,000.00
109,210; 109,211; 109,212;
109,213; 109,214; 109,215;
6 bonds @ \$10,000 each... 60,000.00 65,000.00

Victory 4¾ bonds, with coupons #4 and
up, 80 bonds @ \$1,000 each, numbered
as follows:

1,149,001 to 1,149,080 (inclusive).... 80,000.00

U. S. A. Certificates of Indebtedness,
Series F—1921 @ 5¾% p. a., dated Jan.
15, 1921, maturing Oct. 15, 1921, and
numbered as follows:

280 to 293 (inclusive)
14 certificates @ \$5,000
each 70,000.00
17 and 18, 2 certificates
@ 100,000 each..... 200,000.00 270,000.00

U. S. A. Certificates of Indebtedness,
Series G—1921, @ 5½% p. a., dated Feb.
15, 1921, maturing Jul. 15, 1921,
numbered as follows:

6,	5,000.00
19 and 20, 2 certfs.	
@ \$10,000 ea	20,000.00
	<hr/>
	25,000.00

200 War Savings Stamps of the face
value of 1,000.00

Order upon American Smelters Securities Company
of San Francisco, California, to make remittance
to the Presidio Mining Company for Bars num-
bered 10,325 to 10,334, inclusive, containing ap-
proximately 13,292.22 Fine Ounces of silver
bullion.

PRESIDIO MINING COMPANY.

By B. S. NOYES,

President.

By L. M. DOHERTY,

Secretary. [268]

Exhibit "C."

In the District Court of the United States in and
for the Northern District of California, Second
Division.

No. 196.

W. S. OVERTON and CARL A. MARTIN,
Complainants,

vs.

PRESIDIO MINING COMPANY et al.,
Defendants.

San Francisco, California, May 17, 1921.

Received from Walter B. Maling, Receiver of the Presidio Mining Company, order upon American Smelters Securities Company of San Francisco, California, to make remittance to the Presidio Mining Company for bars numbered 10,335 to 10,342, inclusive, containing approximately 11,928.76 fine ounces of silver bullion.

PRESIDIO MINING COMPANY.

By B. S. NOYES,

President.

By L. M. DOHERTY,

Secretary. [269]

Exhibit "D."

I, the undersigned, duly authorized representative of the Presidio Mining Company, at Shafter, in the State of Texas, hereby acknowledge due receipt from Walter B. Maling, Receiver in the action of Overton et al. vs. Presidio Mining Company, et al., now pending in the Southern Division of the United States District Court, for the Northern District of California, Second Division, No. 196—Equity, and the same entitled action now pending in the District Court of the United States for the Western District of Texas, at El Paso, No. 114—Equity, of all of the property in Texas now in possession of said Receiver and fully described in the annexed Inventory marked exhibit "A," and it is hereby understood that as to all supplies mentioned in said Inventory heretofore ordered by said Receiver, by his representative, Fred C.

Handy, and not yet paid for, that said Presidio Mining Company will assume the payment of the same in due course.

Dated: May 11th, 1921.

E. M. GLEIM,

Representative, Presidio Mining Company.

Mr. E. M. Gleim:

Upon the delivery to you of the property of the Presidio Mining Company in Texas by Mr. Fred C. Handy, representative of the Receiver, you are hereby authorized to execute a receipt therefor substantially in the foregoing form.

PRESIDIO MINING COMPANY.

By B. S. NOYES,

President.

L. M. DOHERTY,

Secretary. [270]

Exhibit "E."

Shafter, Texas, May 11th, 1921.

As a part of the foregoing receipt and in conformity with joint telegram signed by Walter B. Maling and B. S. Noyes, the Presidio Mining Company assumes payment of bills owing by Receiver for unpaid supplies and labor, to be paid by it in due course.

E. M. GLEIM,

Representative Presidio Mining Company. [271]

Exhibit "F."

Shafter, Texas, May 11th, 1921.

I, the undersigned, the duly authorized representative of the Presidio Mining Company, at Shafter,

in the State of Texas, hereby acknowledge due receipt from Walter B. Maling, Receiver in the action of Overton et al. vs. Presidio Mining Company, et al. of the following moneys and bank deposits, to wit:

Cash balance in Marfa National Bank, Marfa, Texas, as shown by check-book stubs in Shafter office, after checks No. 02668-02710 inclusive have been paid and including checks as listed below \$4242.56

The above-mentioned checks being as follows:

Al Driffill	\$30.40	
E. H. Page.....	17.65	
T. H. Pomeroy.....	30.50	
F. C. Handy.....	30.50	
H. Bryant	30.50	
E. G. Gleim Co.....	3.00	142.55

Money in office safe at Shafter, as follows:

Coin	\$360.12	
Paid C. O. D. package, H. Cook Co...	1.29	
Paid for Postage Stamps.....	10.00	371.41

Cash in savings account Marfa National Bank, Marfa, Texas, on February 1st, 1921, with accrued interest from February 1st. 1921, to May 1st, 1921 \$17,230.27

E. M. GLEIM,

Representative Presidio Mining Company. [272]

Exhibit "G."

Exhibit "A."

PRESIDIO MINING COMPANY.

Inventory of real estate, buildings, equipment, machinery, etc., belonging to Presidio Mining Company, turned over this 11th day of May, 1921, to E. M. Gleim, representative, Presidio Mining Company by Walter B. Maling, Receiver, per F. C. Handy, his representative.

Real Estate

Section 8, Containing 640 acres.

Section 5, Containing 640 acres.

Tailings Dump, " 26.41 "

Tramway line, " 37.00 "

Mill Site, " 73.87 "

Buildings.

1 Mill Building, galvd. iron sides, metal roof containing the following machinery and equipment:

1 tramway terminal, with weight boxes.

1 steel ore bin & shaking screens, 550 ton capacity.

1 wooden water tank, 10,000 gallons capacity.

2 condensers.

1 steel hot-water tank.

15 stamp battery complete, 1150# stamps.

1 steel battery storage tank, 14' x 8'.

2 Dorr thickeners complete, 30' x 10' with motors.

1 Ingersoll-Rand air-compressor, 12 $\frac{1}{4}$ x12.

1 Marsh air-compressor, 10 x 12.

- 2 circulating pumps, $2\frac{1}{2} \times 3$, with motors.
- 1 Allen cone classifier.
- 1 Worthington D. C. fire pump, $9 \times 4 \times 10$.
- 1 Ingersoll-Rand air-compressor & rec. 10×10 .
- 1 Westinghouse electric generator, 37 K. W.
115 V.
- 1 G. E. generator, 20 K. W. 115 V.
- 1 De La Vergne oil burning engine, 100 h. p.
- 2 De La Vergne oil burning engines, 150 h. p.
each.
- 2 bucket elevators, 55 ft. lift.
- 2 steel tube mills, each $4'-6'' \times 18'$.
- 2 Oliver continuous filters, each $11'-6'' \times 14'$.
- 1 steel tank for sulphate.
- 1 steel sump-tank, $18' \times 5'$.
- 4 steel Pachuca agitating tanks, $14' \times 28'$.
- 2 steel clarifying tanks, each $16' \times 4'$.
- 1—6 comp. metal zinc boxes, with motor.
- 3—double 5 comp. metal zinc boxes.
- 5—8 comp. wooden zinc boxes.
- 1—Donaldson melting furnace, with motor &
blower.
- 1 reverbatory simplex melting furnace.
- 2 Deming triplex pumps, $4'' \times 6''$.
- 1 steel oil storage tank, 17 bbl. for melting room.
- 1 steel oil storage tank, 17 bbl. for engine room.

[273]

- 1 steel clean up tank, $4' \times 5'$.
- 6 steel fuel oil storage tanks, below ground,
109 bbls. capacity each.
- 2 steel fuel oil storage tanks, above ground,
1000 bbls. capacity.

With all pipe-lines, electric lines, line shafts,
counter shafts, clutches, pulleys, belting,
etc.

- 1 office building, 3 rooms, with furniture, records,
etc.
- 1 Supt's residence, 5 rooms with bathrooms,
with all furniture, bedding, etc.
- 1 cottage, 4 rooms, pantry & bathroom, occupied
by F. Russell.
- 1 boardinghouse building, 4 rooms, with furni-
ture, etc.
- 1 adobe building, 2 rooms, formerly occupied by
doctor.
- 1 cottage, 3 rooms and bath, with furniture, oc-
cupied by M. J. Hughes.
- 1 cottage, 3 rooms and bath, with furniture, oc-
cupied by R. J. Davis.
- 1 cottage, 5 rooms and furniture, occupied by
H. G. Napier.
- 1 Cottage, 3 rooms and furniture, occupied by
B. H. Hughes.
- 1 cottage, 3 rooms and bath, occupied by A. V.
Navarro.
- 1 cottage, 4 rooms and bath, occupied by A.
Driffill.
- 1 cottage, 4 rooms and bath, & furniture, oc-
cupied by T. H. Pomeroy.
- 1 cottage, 4 rooms and bath and furniture, oc-
cupied by M. P. Shapleigh.
- 1 cottage, 3 rooms and bath, occupied by Geo.
Seelig.
- 1 cabin, 1 room, occupied by Geo. Seelig.
- 1 building, 2 rooms, occupied as postoffice.

2 club houses, 20 rooms furnished—occupied by employees.

1 hospital building, 10 rooms, with hospital furniture, etc.

1 finished adobe garage.

1 galvd. iron garage.

1 machine-shop, with lathe, engines, machinery and equipment.

1 storehouse.

1 carpenter-shop, and storehouse, with saw and equipment.

1 shoe-shop—now rented as barber-shop, adjoining E. G. Gleim store.

Pumping Plant.

1 Galvd. iron pump-house.

1—6 x 8 Deane triplex pump.

1—6 x 10 Deane triplex pump.

1—10 h. p. electric motor, with starting equipment, with all line shafts, counter shafts, pulleys, belting, pipe-lines, etc.

1 wooden building with 2 old steam pumps—not in use.

Miscellaneous.

1 wooden building for lime storage.

1 rock building for lime storage.

1 wooden building for fire hose cart.

1 wagon scales.

1 corral, sheds, etc.

1/2 interest in chemical fire extinguisher—kept in machine shop—other 1/2 interest owned by E. G. Gleim Co. [274]

1 new 1921 Franklin touring car.

1—5 passenger Ford.

1—Smith-form-a-Ford truck.

At Marfa, Texas.

6 steel oil storage tanks, 109 bbls. each capacity,
with building, motor, two pumps, all piping,
belting, etc., enclosed by fence.

Mine.

Mine Power-house.

1 metal lath and plaster power-house building,
containing

2 De La Vergne oil burning engines, 120 H. P.
each, complete with starting equipment,
etc.

1 Stover gas engine for starting.

1 Ingersoll-Rand air compressor, 15 and 9 x 15
with receiver.

1 Ingersoll-Rand air-compressor 10 x 10.

1 electric generator, with switch boards, regu-
lators, etc.

1 small electric generator, switch-board, etc.

1 experimental flotation machine.

1 metal lath & plaster building for storehouse
and shop.

1 metal lath & plaster building for pump-house,
with pumps and motors.

2 cooling water-towers and tanks.

1 concrete water-tank.

1 galvd. iron building containing steel oil-
storage tank. With all line shafting,
clutches, pulleys, belting, etc.

Core Drill.

- 1 building, containing 1 F-3 Calyx drill and equipment, with gas engine.

East Shaft Hoisting Plant.

- 1 wooden head frame, complete, with station, etc.
- 1 galvd. iron bldg. containing 1 Gates double steam drum, electrified with controller and other equipment, with 2000 ft. wire cable.
- 1 steam boiler, and feed pump, with two oil storage tanks, line, etc.

2 shaft cages.

- 1 stone building, for blacksmith-shop, with forge, drill-press, blower, etc.

- 1 stone building for sample grinder, crusher, gas engine, and other equipment.

- 1 stone building for round house for Ford motors.

- 1 galvd. iron building for carbide storage.

- 1 galvd. iron building, containing two rock-crushers, ore bins, two oil burning engines, one gas engine, triplex pump, one 50 h. p. electric motor, tramway, terminal complete, with all shafting, pulleys, belts, etc.

- 1 aerial tramway complete, with track cables, traction cables, 12 towers to support cables, buckets, etc. About 5200 ft. in length.

- 1 telephone line and instruments for above tramway service. [275]

South Shaft Hoisting Plant.

- 1 mines office building, with furniture, mine map, etc.

1 cottage for mine foreman, with furniture, 5 rooms and bath.

1 cottage for asst. foreman, with furniture, 3 rooms and bath.

1 frame cottage, 3 rooms, unoccupied.

1 old frame building, 1 room.

1 map room building, with 3 rooms.

Several adobe shacks, about 20—occupied by miners.

1' wooden head frame, and ore bins.

1 building containing,

1-35 h. p. W. C. Gas engine, hoist and hoisting cable.

1 building containing,

1 drill sharpener, oil forge, emery wheel, gas engine, etc.

1 rock garage building, containing 1 Delco lighting plant, complete.

1 building for carbide storage.

1 building for oil storage.

1 building for fuse and caps.

1 old wooden store house building.

Corrals and shed.

Joint Tunnel.

1 wooden ore bin.

1 corral and sheds.

Shaft No. 4.

1' wooden head frame.

1 wooden ore bin, 10 ton capacity.

1 bldg. with 6 H. P. gas engine and hoist.

1 blg. for blacksmith-shop.

Shaft #15.

1 bldg. containing 1-6 H. P. gas engine, with
hoist—formerly used in bore hole.

1 wooden head frame, cables, etc.

Magazines.

3 powder magazines, for powder storage.

Surface Haulage System.

5200 ft. more or less of 24" gauge track.

2 Ford motors, used as locomotives.

1 Ford motor, used partly on 40 ft. level.

6-2 ton side dump cars.

Miscellaneous.

1-5 passenger Dodge automobile.

1 small Ford truck.

Underground Workings.

About 24 miles, more or less, of tunnels, drifts,
cross-cuts, etc. with track, chutes, ladders,
windlasses, ore cars, buckets, air hoists, air
drills, shovels, hammers, and other tools,
wheel barrows, mining tools etc. [276]

PRESIDIO MINING COMPANY.

Inventory of Mine & Mill Supplies on Hand May
1st, 1921.

Articles.	Amount.	Cost.
MINE.		
Dynamite, 40%	20,950 lbs.	\$4310.75
Dynamite, 60%	2,000 lbs.	584.06
Fuse	8,600 ft.	60.96
Blasting Caps,	1,600	25.02
Electric Caps,	4,600	249.00
Igniters,	3,000	158.09

Articles.	Amount.	Cost.
Carbide,	900 lbs.	84.77
Carbide Lamps,	5	15.05
Blacksmith coal,	5 tons	138.28
Drill steel, hand,	30 pcs.	167.10
Pick steel,	1½ bar	2.96
Hammer handles, 18"	36 doz.	25.92
Hammer handles,	27 —	12.00
Pick handles,	67 —	37.56
Round pick shovels,	3	5.57
Mag. Red engine oil,	1½ bbl.	11.46
Oilite,	1½ bbl.	20.88
Mag. Gas engine oil,	2 bbls.	57.86
Engine waste,	1 bale	21.95
Sturtevant crusher.		
Shoes	2	159.35
Dies	2	180.69
E. P. F. Crusher.		
Shoes	3	108.01
Dies	1	27.57
Ore buckets	3	131.52
Wire rope, tramway	1'	1634.94
Tramway traction		
rope,	5600 ft.	2521.82
Hoisting cable,	1400 ft.	293.33
Rubber belt, 16"x6		
ply	52 ft.	104.88
Coal oil [277]	55 gals.	10.17,
		<hr/>
		\$11,161.52

Articles.	Amount.	Cost.
MILL.		
Stamps.		
Boss heads	1	\$55.08
Cams	5	293.15
Cam shafts, 10 stamp	1	175.05
Cam shafts, 5 stamp	2	323.45
Dies	7	102.22
Shoes	5	123.41
Tappetts	2	85.35
Mortars.		
Black liners,	5	100.81
End liners,	12	106.61
Spouts,	3	65.80
Tube Mills.		
Tires	2	196.50
Steel Balls	21,080 lbs.	1414.71
Classifier spirals	209	229.86
Conveyor spirals	152	184.80
Treatment.		
Cyanide	6410 lbs.	2231.11
Lime	141,885 lbs.	1064.23
Ferrous sulphate	3½ bbls.	77.11
Thickeners.		
Gears	1	36.46
Filters.		
Hydchl. Acid	2 cb.	41.10
Worm gears	1	107.74
Wire	1 reel	30.29
Canvas	1	76.66
Burlap	1	9.92

Articles.	Amount.	Cost.
Precipitation.		
Zinc shavings	6400 lbs.	1250.39
Drying & Melting.		
Borax glass	3550 lbs.	845.17
Bi-carbonate soda	2606 lbs.	176.21
Furnace linings	2	240.08
Fire clay	7 sacks	24.45
Power-Eng. D-204.		
Cylinder head	1	600.00
Cylinder lining	1	215.00
Piston	1	608.65
Miscellaneous parts		180.20
[278]		
Power-Eng. 398.		
Cylinder lining	1'	\$160.00
Cylinder head	1	625.05
Piston	1	369.95
Compressor cylinder	1	150.00
Compressor piston	1	60.00
Miscellaneous parts		180.20
Power-Eng. 403.		
Complete set of S. I.		
equipment	1	1026.52
Electric lamps,	48	16.23
Liquid base oil	1½ bbl.	31.15
Albany compound	1 bbl.	79.92
Oilite	3 bbls.	111.49
Belt dressing	60 lbs.	35.97
Babbitt	101 lbs.	44.23
Salt	1 sack	4.10

Articles.	Amount.	Cost.
Rubber belting, 4"x5 ply.	65 ft.	34.04
Rubber belting, 6"x6 ply.	60 ft.	60.58
Rubber belting, 8"x6 ply.	100 ft.	131.49
Rubber belting, 10"x8 ply.	110 ft.	274.66
Rubber belting, 14"x7 ply. Elev.	110 ft.	360.19
Rubber belting, 14"x7 ply.	4 pra.	19.82
Rubber gloves	7 sacks	14.40
Cement		
		<hr/> \$15,605.07
In transit—1 FHB piston complete		543.50
		<hr/> \$15,061.57

FUEL ACCOUNT.

Wood	8 cds.	67.33
Fuel Oil	1296.7 bbls.	6746.09
Total of Mine Supplies..	\$11,161.52	
Total of Mill Supplies...	15,605.07	
Total Fuel Account.....	6,813.42	

Grand Total\$33,580.01

E. M. GLEIM.

[Endorsed]: Filed May 27, 1921. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [279]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 196—IN EQUITY.

W. S. OVERTON and CARL A. MARTIN,
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,
WM. S. NOYES, B. S. NOYES, L. OS-
BORN, JOHN W. F. PEAT, and L. M.
DOHERTY,

Defendants.

**Defendants' Exceptions and Objections to Fourth
and Final Report and Account of Receiver.**

Walter B. Maling, Receiver herein, having filed herein his "Fourth and Final Report and Account of Receiver," in pursuance of the order of this Court made herein on the 6th day of May, 1921, which said order is here referred to and, except as to the title of court and cause, reads as follows, to wit:

**"ORDER AUTHORIZING RECEIVER TO DE-
LIVER PROPERTY TO DEFENDANT
PRESIDIO MINING COMPANY."**

"The Mandate from the United States Circuit Court of Appeals for the Ninth Circuit in this case having been presented and spread upon the minutes of this Court;

NOW, THEREFORE, on motion of R. T. Harding, solicitor for the defendants (but said defendants not waiving directly or indirectly, but on the contrary expressly reserving all objections heretofore made to said receivership, and also the right to claim upon the coming in and settlement of the final account of said Receiver, and at all times and upon all other occasions, that he, the said Receiver, must account for and return to the possession of said defendant corporation, Presidio Mining Company, all of the property which has come into his hands as such Receiver without deduction for costs, [280] judicial allowances, or expenses and/or Receiver's compensation, attorney's fees, commissions, or other charges of said receivership; and now, at all times, insisting that all such charges must be paid by the complainants who have caused said Receiver to be appointed), IT IS HEREBY ORDERED that WALTER B. MALING, Receiver heretofore appointed, turn over and deliver to the defendant Presidio Mining Company all of the property of said defendant in his possession or under his control as such Receiver, except the sum of Five Thousand (\$5,000) Dollars, which is to be retained by him in order to satisfy any balance of commissions and expenses of the receivership, including attorney's fees, which may be allowed him in his final account.

That said Receiver take from said Presidio Mining Company such receipts and acknowledgments as will evidence the payment and delivery of said property, and that he file herein a report and ac-

count of his receivership since his last report and account and present the same to this Court.

That immediately upon the entry of this order herein that the Clerk of this Court certify to a copy thereof and cause the same to be filed with the Clerk of the District Court of the United States for the Western District of Texas, at El Paso, in the auxiliary suit of Overton et al. vs. Presidio Mining Company et al., No. 114—Equity.

Done in open court this 6th day of May, one thousand nine hundred and twenty-one (1921).

WM. C. VAN FLEET,
Judge.”

Now come the defendants, and except and object to said account and to the settlement thereof, and respectfully show to this Honorable Court:

That said Receiver was appointed by this Court without necessity therefor, and against and over the objections of these defendants, as will more fully hereinafter appear; and that on the appeal from said order of appointment, to the United States Circuit Court of Appeals for the Ninth Circuit, the order of this Court appointing said receiver was reversed, and said receiver discharged, for the reason and upon the grounds hereinafter more fully set forth:

That said Receiver filed his first report and account herein on the 2d day of November, 1918, and on the 28th day [281] of December, 1918, he filed a supplemental report thereto. That said reports contained a financial statement and report of said receivership from the 2d day of February, 1918,

the date said Receiver took possession of the office of the defendant, Presidio Mining Company, to the 31st day of October, 1918. That said report and account and supplement thereto were allowed and confirmed by the order of this Court filed herein on the 13th day of January, 1919, but over the exceptions and objections of these defendants, and subject to a certain stipulation between the complainants herein and these defendants, which said stipulation was filed herein on December 11, 1918, and which stipulation is here referred to, and, with the exception of the title of Court and cause, is in the words and figures following, to wit:

“STIPULATION ALLOWING FEES OF RECEIVER AND HIS ATTORNEY.

WALTER B. MALING, Receiver herein, having filed in said Court first above mentioned, his report of his proceedings as such Receiver, from the 23d day of February, 1918, and also having therein asked said Court for an allowance to himself and his attorney, Frank R. Wehe, Esq., on account of their services as such Receiver and attorney herein, covering the year 1918, in order that the expenses of the receivership may be treated as deductions from the net income of such receivership during this fiscal year;

AND IT APPEARING That the above-named defendants and each of them, have heretofore consistently opposed and objected to the appointment of any Receiver in said cause; and that the appointment of said or any Receiver in said action was and

is contended by said defendants to be without any authority or jurisdiction in said Court to make such appointment, and is without any foundation in either the pleadings or the proof or records in said cause, to justify the same; and that the said defendants have preserved for review on appeal by the Circuit Court of Appeals, for the Ninth Judicial Circuit, each and all of their said objections to the appointment of said or any Receiver;

AND IT ALSO APPEARING That on account of the probability that said Court may not be able to hear said record until after the close of the fiscal year on account of the illness of the Judge of said Court who is familiar with all of the said matters, and who appointed said Receiver; [282]

NOW, THEREFORE, IT IS HEREBY STIPULATED That nothing in this stipulation contained shall be, or be construed to be any waiver, surrender, modification, estoppel, or limitation of any kind or character upon said defendants' said objections, and/or upon the full right of said defendants, or each or any of them, to insist in all proper places and at all proper times upon their said objections to the appointment of said or any Receiver, and/or upon any proceedings based upon said or similar objections that said defendants, or any or either of them, may hereinafter be advised to take;

AND IT IS FURTHER HEREBY STIPULATED That the sum of Four Thousand Two Hundred Seventy and 76/100 (\$4,270.76) Dollars is a reasonable sum to be allowed said Receiver as such fees from the 23d day of February, 1918, to the 31st

day of December, 1918, and that a like sum is a reasonable sum to be allowed said Frank R. Wehe for his fees as attorney during the same period, and that any Judge of said Court may make an order to that effect, and that thereupon said Receiver may draw from the funds now in his hands the said sums and pay the same to himself and his said attorney, as above stipulated.

Dated this 11th day of December, A. D. 1918.

WM. F. ROSE,

Attorney and Solicitor for Complainants.

R. T. HARDING and

HENRY E. MONROE,

Attorneys and Solicitors for said Defendants.

J. J. DUNNE,

Of Counsel.

It is so ordered.

M. T. DOOLING,

Judge."

These defendants now except and object to all items of expenditure in said account of said Receiver which would not necessarily or properly have been incurred or expended by the defendant, Presidio Mining Company, in the usual and regular conduct of its business, if the receiver had not been appointed, and had not taken charge of its property, and in particular these defendants now object to the allowance to said receiver of the following items and amounts contained in said report and account, to wit:

\$4270.76 paid to Walter B. Maling on account of Receiver's fees.

4270.76 paid to Frank R. Wehe on account of attorney's fees. [283]

70.00 Court fees.

4500.00 paid to F. C. Handy, Receiver's Assistant at Shafter, Texas, ten months at \$450 per month.

988.33 paid to Receiver's bookkeeper at varying rates.

50.00 paid to premium on Receiver's bond.

579.25 paid for traveling expenses from San Francisco to the mine at Shafter, Texas, and return for W. B. Maling, F. R. Wehe and F. C. Handy.

Total. . \$14729.10

That on the 10th day of December, 1919, said Receiver filed herein his second report and account for the period covering the time from the 1st day of November, 1918, to the 1st day of October, 1919, both inclusive. That on the 22d day of December, 1919, these defendants filed herein their objections to said Receiver's second account, but that this Court allowed and confirmed said second report and account on the 13th day of January, 1920, over the objections and exceptions of these defendants. That defendants' objections to receiver's second report are here referred to, and, with the exception of

the title of Court and cause, are in the words and figures following, to wit:

“DEFENDANTS’ OBJECTIONS TO RECEIVER’S SECOND REPORT.

Now come the defendants above named, and in particular the defendant, the Presidio Mining Company, and object to the allowing of the account of Walter B. Maling, the Receiver herein, and to the approval of his report, dated the 10th day of December, 1919, and filed herein on the 10th day of December, 1919; and in this regard these defendants respectfully represent to this Court:

That the Interlocutory Order and Decree appointing Walter B. Maling the Receiver herein was made and entered on the 20th day of February, 1918.

That the Interlocutory Decree determining the legal and equitable rights of the parties hereto was made and entered on the 16th day of February, 1918.

That thereafter, and in due time, appeals were taken by these defendants from both of said decrees to the United States Circuit Court of Appeals, for the Ninth Circuit, and [284] that on stipulation of the parties and the order of said Court, both appeals were heard together and upon the same record.

That in and by said Interlocutory Decree made and entered on the 16th day of February, 1919, a certain Interlocutory Injunction was kept in full force and effect.

That on the 27th day of October, 1919, the said Circuit Court of Appeals filed its opinion in the matter of said appeal directing a final decree to be entered in this Court in accordance with said opinion, and further directing that the Interlocutory Injunction be dissolved and the Receiver discharged.

That the complainants have filed in said Circuit Court of Appeals a petition for Diminution of Record, and that in consequence thereof the mandate of said Court has been stayed.

These defendants further represent to this Honorable Court that in the original and in all subsequent complaints, and on various motions made by them in open Court, the Complainants sought the appointment of a Receiver herein; but that on each and every occasion when the complainants sought the appointment of such Receiver, these defendants, and each of them, resisted such appointment with all the power at their command.

That after this Honorable Court had filed its opinion and decision herein directing among other things, the appointment of a Receiver but before the appointment of such Receiver, these defendants filed herein their petition and motion, and notice of motion to reopen this cause, and with all the power at their command opposed and resisted the appointment of a Receiver herein upon the ground that the appointment of such Receiver would be erroneous and unlawful, and not necessary for the protection of the rights of the complainants; but the Complainants, with all the power at their command

again urged and insisted upon the appointment of a Receiver herein.

These defendants further represent to this Honorable Court that when under the aforesaid circumstances, the appointment of a Receiver is finally determined to be erroneous, that such Receiver is compelled to return the property without deduction of any kind to the person from whom it has thus unlawfully been taken; and if the fees and expenses of such Receivership are to be paid at all, they are to be paid, not out of the fund which has thus wrongfully come into the hands of the Receiver, but by the parties litigant who have caused such Receiver to be appointed.

These defendants, for the reasons aforesaid, object therefore;

(1) To the allowance and payment of any fees of said Receiver either for himself or for his attorney out of the fund now in his possession.

(2) The disbursements of the Receiver set forth on page 5 of said Report and Account and recapitulated on page 7 thereof include the sum of \$430 per month for twelve months, since the filing of the Receiver's last account and report, [285] paid to F. C. Handy, an assistant or deputy employed by said Receiver, and \$100 per month for the same period of twelve months paid to Florence M. Handy, a bookkeeper employed by said Receiver, making a total of \$6600; that said sums are strictly expenses of receivership and were not to any extent whatsoever expenses that would have been incurred by these defendants had there been no receivership;

but, on the contrary, the services for which said payments were made would have been, and previous to the appointment of said Receiver were, performed by the duly elected officers of the corporation, Presidio Mining Company.

(3) The said disbursements of said Receiver also includes traveling expenses amounting to \$826.56, Clerk's fees amounting to \$15, Premium on Receiver's Bond amounting to \$50 and the sum of \$3699.40 paid to Haskins and Sells, accountants, (said latter sum being incurred upon the insistence of the complainants), all of which sums are expenses of said Receivership, and no part of which would have been incurred or paid except for said receivership.

(4) That no part of said sums above specified, nor of the compensation now asked for by said Receiver for himself and his attorney for the period since the filing of said Receiver's last account, are properly or legally payable out of, or deductible from, the funds of the defendant, Presidio Mining Company.

WHEREFORE this defendant prays that the said sums hereinbefore referred to, be deducted from the operation and administration expenses of the defendant, Presidio Mining Company, and be not allowed, and that no fees be allowed for said Re-

ceiver, either for himself or his attorney, otherwise than to be paid by the Complainants herein.

Respectfully submitted,

PRESIDIO MINING COMPANY, a Corporation,

WM. S. NOYES,

B. S. NOYES,

L. OSBORN,

JOHN W. F. PEAT, and

L. M. DOHERTY,

Defendants.

By R. T. HARDING,

HENRY E. MONROE,

Their Solicitors.

J. J. DUNNE,

Of Counsel."

These defendants now except and object to all items of expenditure in said second account of said receiver which would not necessarily or properly have been incurred or expended by the defendant, Presidio Mining Company, in the usual and regular conduct of its business, if the receiver had not been [286] appointed, and had not taken charge of its property, and in particular these defendants now object to the allowance to said receiver of the following items and amounts contained in said report and account, to wit:

\$5000.00 paid to Walter B. Maling, as Receiver's fees.

\$5000.00 paid to Frank R. Wehe as attorney's fees for said Receiver.

\$5400.00 paid to F. C. Handy, Receiver's Assistant
at Shafter, Texas.

\$1225.00 paid to Receiver's bookkeeper.

\$ 50.00 paid on account of premium on Receiver's
bond.

\$ 546.56 traveling expenses of W. B. Maling, F. R.
Wehe and F. C. Handy.

\$3679.40 paid to Haskins & Sells, certified account-
ants.

\$2500.00 as fees paid to the Master in Chancery
herein.

As to said sum of \$3679.40 paid to Haskins & Sells for auditing the books of the defendant, the Presidio Mining Company, these defendants aver that said expenditure was incurred by said Receiver upon the insistence of the complainants, and was wholly unnecessary, and of no value to these defendants, or any of them.

As to the expenditure of said sum of \$2500.00 paid as fees to the Master in Chancery of this Court for taking an account under and in pursuance of the Interlocutory Decree entered herein, these defendants aver that the following proceedings took place before said Master in Chancery at the commencement of said hearing:

“In the District Court of the United States in and for the Southern Division of the Northern District of California, Second Division, before Hon. H. N. Wright, Standing Master in Chancery, on June 24, 1918, an outline of the situation and a state-

ment of the case was made by W. S. Rose, Esq., Solicitor for the complainants. In this outline and statement, said solicitor for said complainants, after reciting the facts and history of the cause as claimed by him, stated, 'that, in substance, is the outline of the status as it comes to the Master for the accounting.' Said solicitor then closed his statement with the remark, 'I think that covers an outline of the situation so far as the statement to the Master is concerned at this time.'

Thereupon, the following proceedings were had:

'Mr. DUNNE.—The present hearing, Mr. Rose, as I gather it, is to be traced back to the interlocutory decree which was given [287] in this action?

Mr. ROSE.—Yes.

Mr. DUNNE.—And the authority, so to speak, of the Master to proceed in the present inquiry is based on that interlocutory decree?

Mr. ROSE.—Absolutely, yes.

Mr. DUNNE.—And you will concede, I hope, that an appeal has been taken from that interlocutory decree?

Mr. ROSE.—Yes. Excuse me, Mr. Dunne, I meant to mention that, that an appeal has been taken.

Mr. DUNNE.—Yes. I therefore object to any proceedings being had in the present instance, on the ground that an appeal has been perfected from that decree, that the decree is suspended pending the appeal. I don't suppose it would be admissible in evidence, even, in a controversy between the parties. To preserve the rights of the persons whom

we represent, it being conceded here that this appeal has been perfected, we wish to make the objection that the Master in Chancery is without authority or jurisdiction to proceed at this time, pending the decision on appeal from the interlocutory decree to which is traced and on which is based his authority to act at all.

Mr. ROSE.—The answer to that is that the appeal and the proceedings subsequent to the entry of this decree do not stay the carrying on of the suit, or of all transactions leading to a final decree subsequent to the appeal from the interlocutory decree, or, rather, both, as the appointing of a receiver in this case, and as to injunctions and the statements of the decree itself. The fact that there is an appeal does not stay the proceedings. I believe that will be conceded. If it is necessary I will produce the authority to show that that is a fact. I do not think that there is a question, your Honor, as to the right to proceed now.

The MASTER.—I never had the question raised before. My impression is that the objection is without merit and it will be accordingly overruled.

Mr. DUNNE.—And to the ruling of the court in that respect the defendants respectfully note an exception. I suppose I should use the word ‘respondent,’ it being an equity suit.

The MASTER.—That is immaterial. In the new rules, I understand that that distinction has been done away with; they speak of plaintiff and defendant.’ ”

That said receiver filed his third report and account herein on the 30th day of November, 1920, covering the time from the 1st day of November, 1919, to the 31st day of October, 1920, inclusive. That on the 4th day of December, 1920, this Court allowed and confirmed said report, over the objections and exceptions of these defendants, and in this behalf these defendants aver that prior to the allowance of said account, and on the 4th day of December, 1920, these defendants filed "Objections of Defendants to the Allowance of, and to Settlement of. [288] Receiver's Account," which said objections, except as to the title of court and cause, are in the words and figures following, to wit:

"Walter B. Maling, Receiver herein, having filed in said Court first above mentioned his report and account of his proceedings as such Receiver from the 1st day of November, 1919, to the 31st day of October, 1920, inclusive, and also having therein asked said Court for an allowance to himself and his attorney, Frank R. Wehe, Esq., on account of their services as such Receiver and attorney herein, covering the calendar year One Thousand Nine Hundred and Twenty, in order that the expenses of the receivership may be treated as deductions from the net income of said receivership during said fiscal year;

Now come the defendants in the above-entitled cause, and object to the settlement of said account, and hereby reserve to themselves the right at all future times, to object to any and all of the actions and proceedings of said Receiver, and to insist in

all proper places and at all proper times upon their said objections, and upon objections heretofore made, to the appointment of said, or any, Receiver, and/or upon any proceedings based upon said, or similar, objections that said defendants, or any of them, heretofore have made, or may hereafter be submitted;

Said defendants concede that if said receivership is proper, and said Receiver was legally and properly appointed, that then the sum of Ten Thousand (10,000) Dollars is a reasonable sum to be allowed to said Receiver, (Five Thousand (5,000) Dollars for himself and Five Thousand (5,000) Dollars for his said attorney), covering the full fiscal year of One Thousand Nine Hundred and Twenty;

As to the allowance of said account, and as to the allowance to said Receiver and his said attorney, these defendants further state that said defendants claim that in the event the order appointing said Receiver is reversed by the United States Circuit Court of Appeals, that then said Receiver must redeliver the property of the defendant, Presidio Mining Company, to it without deduction;

And the defendants now make the further specific objection to said account, that the sum of Fourteen Hundred and Seventy-five (1475) Dollars paid to Florence M. Handy, the bookkeeper of said Receiver, and the sum of Five Thousand Four Hundred (5400) Dollars paid to F. C. Handy, the representative of the Receiver at the mine, are erroneously included in the statement of expenses of operation, on page six (6) of said report, but that

they are in fact expenses of the receivership, and would not have been incurred or paid, except for said receivership.

Dated this 4th day of December, One Thousand Nine Hundred and Twenty (1920).

R. T. HARDING and

HENRY E. MONROE,

Attorneys and Solicitors for Said Defendants.”

[289]

These defendants now except and object to all items of expenditure in said last-mentioned account of said receiver which would not necessarily or properly have been incurred or expended by the defendant, Presidio Mining Company, in the usual and regular conduct of its business, if the receiver had not been appointed, and had not taken charge of its property, and in particular, these defendants now object to the allowance to said receiver of the following items and amounts contained in said report and account, to wit:

\$5000.00 paid to Walter B. Maling, as receiver's fees.

\$5000.00 paid to Frank Rl. Wehe, as attorney's fees for said receiver.

\$5400.00 paid to F. C. Handy as Receiver's Assistant at Shafter, Texas.

\$1500.00 paid to receiver's bookkeeper.

\$ 50.00 paid as premium on Receiver's bond.

That said receiver filed herein his said “Fourth and Final Report and Account of Receiver,” on the 27th day of May, 1921, covering the period of time from the 1st day of November, 1920, to the 6th day

of May, 1921, inclusive, and these defendants except and object to all items of expenditure in said account which would not necessarily or properly have been incurred or expended by the defendant, Presidio Mining Company, in the usual and regular conduct of its business, if the receiver had not been appointed, and had not taken charge of the property, and these defendants object to the allowance to said receiver of the following items and amounts contained in said report and account, to wit:

\$2100.00 paid to F. C. Handy, the receiver's assistant at Shafter, Texas.

\$ 500.00 paid to receiver's bookkeeper.

\$ 50.00 paid on account of premium on receiver's bond [290]

That in said last-mentioned report and account, said Receiver states that the fees of himself and attorney have been paid to the 31st day of December, 1920, and prays that fees of himself and his attorney since the 31st day of December, 1920, be ordered paid from the balance of the funds now in his hands; but these defendants except and object to the payment of any further fees to said Receiver and his said attorney, and in this behalf, and as to all other items and amounts hereinabove specified and excepted to and objected to, in any of the aforesaid four accounts, these defendants represent, urge and contend that upon the principle of law that if the appointment of a Receiver is erroneous or void, and the advance party does not acquiesce in it, but continues to contest it to a successful determination, any compensation which may accrue to the Receiver in

the meantime, and his expenses incurred in the administration of the estate, must be taxed to the party who applied to have the appointment made.

As to any of the aforesaid specified items or amounts to the allowance of which these defendants are now objecting and excepting, which may be in whole or in part included in the general statements of expenditures of any of the aforesaid accounts, these defendants pray that the Receiver may be examined in open court, as to such expenditures or payments made by him, which are not disclosed upon the face of the said four accounts, or any of them. [291]

These defendants further aver and respectfully represent to this Court that throughout this cause, and whenever the opportunity presented itself, they resisted with all the power at their command, the appointment of a Receiver herein, and in this behalf show:

That the original bill of complaint was filed in this Court and cause on July 26, 1915, to which reference is hereby made. That the prayer in said bill of complaint is as follows:

“Your orators further pray that the Court and your Honor may decree as follows:

1. For an injunction restraining and preventing the said directors and officers of said Presidio Mining Company, the defendants, and each and every one of them, and each of their counsellors, attorneys, solicitors, agents, servants, employees, and all parties acting by, through, or under them, or either or any one of them, or in aid, or in assistance of

them, or either, or any one of them, from the further commission of any, or similar acts, as is in this bill of complaint averred and complained of, or of further carrying on the business of the said Presidio Mining Company.

2. That all salaries for said directors and officers in San Francisco be forthwith cut off, and said directors and officers be restrained from collecting any further salaries or any money on account of alleged back salaries from said corporation pending the final determination of this action, or from further paying out any sums of money whatsoever to any of the officers or directors of said corporation at San Francisco, or any one in collusion with them, or on any account whatsoever; and, further, from disposing of, or otherwise paying out, any sums of money whatsoever, now on hand, or derived from the sale of ore or bullion mined, extracted, milled, smelted, or otherwise acquired from the property of the Presidio Mining Company, or from Section 5 above described, on any account whatsoever until the further order of this Court.

3. That said defendants, and each and all of them, be further restrained from selling or in any other manner disposing of any stock held by them either individually or as trustees, in the Presidio Mining Company or the Silver Hill Mill and Mining Company.

4. That said directors and officers, defendants, be removed from officers either as directors or officers of this company.

5. That said Wm. S. Noyes be prohibited and [292] restrained from transferring title to said Section 5 to any person, or persons, whomsoever; and further, that said Wm. S. Noyes be prohibited and restrained from collecting any sum or sums whatsoever on account of any contract or contracts heretofore made by him with the Presidio Mining Company for any part or percentage of any ore mined, extracted, milled or smelted from Section 5 aforesaid; and that he be further restrained from disposing of any ore or bullion, or any sums of money now on hand, derived in any manner from ores mined, extracted, milled or smelted from either the property of the Presidio Mining Company or from said Section 5, excepting that said Wm. S. Noyes be required and compelled to transfer said Section 5 to said Presidio Mining Company, and on such terms as equity may require.

6. That an accounting be had in the premises pursuant to and under orders of this Court, and that a restitution be required from the proper parties defendant to said corporation and its stockholders and your orators herein, and that said defendants be compelled to make such restitution as may appear just and proper and as to this Honorable Court may appear equitable in the premises.

7. That a temporary receiver be appointed to take charge of all of the affairs and business of said Presidio Mining Company and of all its funds and property, subject to the direction of this Honorable Court.

/

8. For restitution to said corporation in the sum of, to wit, \$150,000.

9. That the complainants may have such other and further relief as to this Court and your Honor may seem equitable in the premises, together with complainant's costs of suit."

That thereupon these defendants, and each of them, moved this Honorable Court to dismiss said bill of complaint upon the ground that the same did not state facts sufficient to constitute a cause of action against them, and that on the 19th day of August, 1915, this Honorable Court rendered its opinion on an order denying the application for the appointment of a Receiver and for an injunction *pendente lite*. That said opinion was filed in this Court and cause on the 19th day of August, 1915, and is, except as to title and cause, in the words and figures as follows, to wit: [293]

"The bill here does not show that the property bought by defendant Noyes was so bought with the money of defendant Presidio Mining Company. Nor does it show that the lease between said defendants is not a profitable one for the Mining Company. Nor does it show that defendant Noyes is not the owner of the leased property, or that the defendant Company has any legal or equitable interest therein. The most that can be said of this bill is that it avers the payment of extravagant salaries to its officers.

The application for a receiver will be denied. The application for an injunction *pendente lite* will

be denied with leave to renew the same upon the filing of an amended bill.

The motion to dismiss will be granted unless plaintiffs within twenty days file an amended bill stating a case for the granting of equitable relief.

August 19th, 1915.

M. T. DOOLING,
Judge."

That thereafter, on the 25th day of September, 1915, the complainants filed herein an amended bill of complaint, to which reference is hereby made. That the prayer in said amended bill of complaint is as follows:

"WHEREFORE, your orators pray this Honorable Court, that the said defendants, and each and every one of them, answer this amended bill of complaint, and to abide by and perform said order and decree in the premises as to this Court shall seem proper.

Your orators further pray that this Court and your Honor may decree as follows:

1. For an injunction restraining and preventing the said directors and officers of said Presidio Mining Company, the defendants, and each and every one of them, and each of their counsellors, attorneys, solicitors, agents, servants, employees, and all parties acting by, through, or under them, or either or any of them or in aid, or in assistance of them or either or any one of them, from the further commission of any, or similar acts, as is in this amended bill of complaint averred and complained of, or of further

carrying on the business of the said Presidio Mining Company.

2. That a receiver be appointed to take charge, control or possession of the San Francisco office of said Presidio Mining Company, its books, records, vouchers, business and affairs, and impound and keep all moneys derived from [294] its said mining enterprise, after payment of operating expenses, and subject to the order of this Honorable Court.

3. That said Receiver also be authorized to receive and hold all moneys derived from operations on Section 5, subject to the order of this Honorable Court.

4. That all salaries for said directors and officers in San Francisco be forthwith cut off, and said directors and officers be restrained from collecting any further salaries or any money on account of alleged back salaries from said corporation pending the final determination of this action, or from further paying out any sums of money whatsoever to any of the officers or directors of said corporation at San Francisco, or any one in collusion with them, or on any amount whatsoever; and further, from disposing of, or otherwise paying out, any sum of money whatsoever, now on hand, or derived from the sale of ore or bullion mined, extracted, milled, smelted, or otherwise acquired from the property of the Presidio Mining Company, or from Section 5 above described, on any account whatsoever until the further order of this Court.

5. That said defendants, and each and all of them, be further restrained from selling, or in any other

manner disposing of any stock held by them, either individually or as trustees, in the Presidio Mining Company or the Silver Hill Mill & Mining Company.

6. That the said directors and officers, defendants, be removed from office either as directors or officers of this company.

7. That said Wm. S. Noyes be prohibited and restrained from transferring title to said Section 5 to any person, or persons, whomsoever; and further, that said Wm. S. Noyes be prohibited and restrained from collecting any sum or sums whatsoever on account of any contract or contracts heretofore made by him with the Presidio Mining Company for any part or percentage of any ore mined, extracted, milled or smelted from Section 5 aforesaid; and that he be further restrained from disposing of any ore or bullion, or any sums of money now on hand, derived in any manner from ores mined, extracted, milled or smelted from either the property of the Presidio Mining Company, or from said Section 5.

8. That said Wm. S. Noyes be adjudged to be a trustee of said Section 5, for the benefit of the stockholders of said Presidio Mining Company, as to any and all profits made by him from Section 5, and otherwise, from his profits received directly or indirectly from his connection with said Presidio Mining Company, and other than from his salary of \$450 monthly; and that he be required to transfer said Section 5 to said corporation, on such terms as equity may require.

9. That said defendants, each, every and all, be held to be trustees for the benefit of the stockholders of said Presidio Mining Company, and of your orators herein, as to any and all profits, benefits, emoluments, received [295] by them, either directly or indirectly, while connected with said corporation and in its employ.

10. That said defendants be required to make restitution to said minority stockholders of said Presidio Mining Company, and your orators herein, for such amount as may be ascertained to be due.

11. That if any profits and benefits received by said Wm. S. Noyes have been used for the purchase of other properties that such properties be declared, to be held by him in trust for the Presidio Mining Company, and said Wm. S. Noyes be required to account therefor.

12. That if any profits and benefits obtained by any of the defendants, other than Wm. S. Noyes, have been used for the purchase of other properties, that such properties be declared to be held by them or either, or any one of them, in trust for the Presidio Mining Company, and that accounting be required therefor.

13. In the alternative that other relief be impracticable, that the value of complainants' interest and the interests of all other stockholders similarly situated, in the property of Wm. S. Noyes be determined, and that the complainants and all other stockholders similarly situated be declared to have a lien upon the assets and properties of Wm. S.

Noyes, for the value of their interests so determined.

14. That an accounting be had in the premises pursuant to and under the orders of this Court, and that restitution be required from the proper parties defendant to said corporation, its stockholders, and your orators herein, and as may appear equitable in the premises to this Honorable Court.

15. That the complainants may have such other and further relief as to this Court and your Honor may seem equitable in the premises, together with complainants' counsel fees and costs of suit."

That thereafter on the 11th day of October, 1915, these defendants filed herein their answers under oath, specifically denying the equities of said amended bill of complaint, to which said answers reference is hereby made.

That at the time of filing their said answers, these defendants also filed their motion to strike out certain portions of said amended bill of complaint, and to dismiss the same, on the ground that it did not state facts sufficient to constitute a cause of action against them. That thereafter [296] said motion came on for argument before this Court, and these defendants presented arguments and cited authorities in support of their contention that said amended bill of complaint should be dismissed for want of equity. That thereafter, on the 28th day of December, 1915, this Honorable Court rendered its oral opinion denying said motion to dismiss, and also said motion to strike, and on the same day made its "Order Denying Motion to Dis-

miss and Application for Receiver, and Granting preliminary Injunction," which said order, except as to title and Court, is in the words and figures following, to wit:

"Defendant's motion to dismiss the amended bill of complaint and motion to strike out parts of the amended bill of complaint and plaintiffs' application for the appointment of a receiver and application for a preliminary injunction; heretofore heard and submitted being now fully considered and the Court having rendered its oral opinion, it is ordered that said motion to dismiss and said motion to strike out be and the same are hereby denied; that said application for the appointment of a receiver be and the same is hereby denied, without prejudice; and that said application for a preliminary injunction be and the same is hereby granted; a formal order for said injunction to be submitted to the Judge for signature and filed."

That thereafter, on the 30th day of December, 1915, on motion of complainants, this Court made herein its further "Order for Preliminary Injunction," wherein and whereby it enjoined these defendants from drawing or paying to themselves any further sum or sums of money from the Presidio Mining Company on account of ore taken from Section 5, mentioned in said amended bill of complaint, and restraining said defendant Presidio Mining Company from paying any money to the defendant Wm. S. Noyes, on account of said Section

5, and restraining the defendant Wm. S. Noyes from *transferring* said Section 5, or any interest therein, pending the determination of this suit, or from in any manner clouding the [297] *the* title thereto.

That said order, except as to title and cause, is in the words and figures as follows, to wit:

“ORDER FOR PRELIMINARY INJUNCTION.

The motion for the preliminary injunction herein having been duly and regularly heard and submitted to this Court, and it appearing that cause exists for the granting of such injunction pending final hearing of this cause as prayed for,

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED that a preliminary injunction issue out of this court upon the giving and filing of a good and sufficient bond in the sum of Five Thousand (\$5,000), to be approved by the clerk of this court, pursuant to the prayer of said amended bill of complaint, strictly commanding and enjoining until the further order of this Court the defendant Wm. S. Noyes above named, his agents, servants, employees, representatives or attorneys, and all persons acting in aid of them, or either or any of them, from drawing or paying to themselves any further sum or sums of money from the said Presidio Mining Company on account of ore taken or extracted from Section 5 mentioned in the amended bill, and that said company be restrained from paying any money to said Wm. S. Noyes, or any one in his behalf, on account of said Section 5, either directly or indirectly, or on account

of any ores heretofore or hereafter produced therefrom; and further restraining said Wm. S. Noyes from transferring said Section 5, otherwise known as survey No. 5, Block No. 8, of the survey of the Houston & Texas Central Railway Company, or any interest therein, pending the determination of this suit, or from in any manner clouding the title thereto.

Done in open court this 30th day of December, A. D. 1915.

WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed Dec. 30, 1915. Walter B. Maling, Clerk."

That thereafter, on the 30th day of December, 1915, this Court, on motion of complainants, made its preliminary injunction against these defendants, and in particular against the defendant Wm. S. Noyes, which said preliminary injunction is in the words and figures as follows, to wit: [298]

“PRELIMINARY INJUNCTION.

“The United States of America,
Northern District of California,—ss.

The President of the United States of America, to
Wm. S. Noyes, His Agents, Servants, Employees,
Representatives, or Attorneys, and Each
of Them, GREETING:

Whereas, on this 30th day of December, A. D. 1915, an order in the above court and suit was made directing that a preliminary injunction issue herein, and wherein and whereby it was ordered,

adjudged and decreed that Wm. S. Noyes, his agents, servants, employees, representatives or attorneys, and each of them, be enjoined and restrained from drawing or paying to themselves any further sum or sums of money from the said Presidio Mining Company on account of ore taken or extracted from Section 5 mentioned in the amended bill, and further restraining said Wm. S. Noyes from transferring said Section 5, or any interest therein, pending the determination of this suit, or from in any manner clouding the title thereto.

Now, therefore, in accordance with the terms of said order directing that a preliminary injunction issue in said suit, we hereby strictly command and enjoin you, the said Wm. S. Noyes, your agents, servants, employees, representatives or attorneys, and all persons acting in aid of you, or either or any of you, from drawing or paying to yourselves any further sum or sums of money from the said Presidio Mining Company, directly or indirectly, for ores heretofore or hereafter produced or extracted from Section 5 mentioned in the complainants' amended bill of complaint, and we do hereby further strictly command and enjoin the Presidio Mining Company, its officers or agents, to refrain from paying to said Wm. S. Noyes, or any one in his behalf, either directly or indirectly, any moneys on account of ores heretofore or hereafter produced from said Section 5; and we do further strictly command and enjoin you, Wm. S. Noyes, to refrain from either directly or indirectly transferring said Section 5, otherwise known as Survey No. 5,

Block No. 8, of the Survey of the Houston & Texas Central Railway Company, or any interest therein, pending the determination of this suit, or from in any manner clouding the title thereto, which commands and injunction you and each of you are respectfully required to observe and obey until other or further orders of said District Court shall be made in the premises.

WITNESS the Honorable WILLIAM C. VAN FLEET, Judge of said District Court, this 30th day of December, in the year of our Lord one thousand nine hundred and fifteen, and of our Independence the one hundred and fortieth.

[Seal] (Signed) WALTER B. MALING,

By _____,

Clerk. [299]

That thereafter, on March 16, 1916, and by leave of Court, the complainants filed herein their "Supplemental Bill to the First Amended Complaint," to which reference is hereby made; and on the same day the complainants also filed their "Amendment to Amended Bill of Complaint," to which reference is also here made.

That on the 23d day of March, 1916, these defendants filed herein their answer, under oath, to said "Supplemental Bill to First Amended Complaint," and also to said "Amendment to Amended Bill of Complaint," denying specifically the averments of said two pleadings, and reference to said answer is here made.

That the aforesaid "Supplemental Bill to the First Amended Complaint," and "Amendment to

Amended Bill of Complaint," were filed in this court and cause on the morning of the day of the commencement of the trial of this cause on its merits, and that immediately after the filing of said two pleadings, and before proceeding with the trial of this cause, these defendants again moved this Honorable Court to dismiss the bill of complaint herein as so amended, on the ground that said bill did not state a cause of action, but this Court denied said motion, and ordered the trial of this cause to proceed.

That thereafter, on August 29, 1916, the complainants, by leave of Court first had, filed an "Amended Prayer to Complainants' Amended Bill of Complaint," to which reference is here made, and which except as to title of court and cause, is in the words and figures following, to wit: [300]

**"AMENDED PRAYER TO COMPLAINANTS'
AMENDED BILL OF COMPLAINT.**

By leave of Court first herein had and obtained, complainants file this their amended prayer to their amended bill of complaint heretofore filed herein, and pray for a judgment and decree of this Honorable Court as follows:

1. For an injunction restraining and preventing the said directors and officers of said Presidio Mining Company, the defendants, and each and every one of them, and each of their counsels, attorneys, solicitors, agents, servants, employees, and all parties acting by, through, or under them, or either or any of them, or in aid, or in assistance of them, or either, or any of them, from the further

commission of any, or similar acts, as in this amended bill of complaint averred and complained of, or of further carrying on the business of the said Presidio Mining Company.

2. That all leases, bonuses and contracts entered into, adopted and ratified by the directors, officers, and majority stockholders of the Presidio Mining Company with other parties be declared null and void so far as may be deemed necessary to this Honorable Court, including the leases of January 25, 1913, the bonus resolution of February 15, 1913, and the contract of November 19, 1913.

3. That all salaries for said directors and officers of San Francisco be forthwith cut off, and said directors and officers be restrained from collecting any further salaries or any money on account of alleged back salaries from said corporation pending the final determination of this action, or from further paying out any sums of money whatsoever to any of the officers or directors of said corporation at San Francisco, or anyone in collusion with them; and, further, from disposing of, or otherwise paying out, any sums of money, whatsoever, now on hand, or derived from the sale of ore or bullion mined, extracted, milled, smelted, or otherwise acquired from the property of the Presidio Mining Company, or from Section 5 above described, or any account whatsoever, and subject to the further order of this Court.

4. That said directors and officers, defendants, be removed from office either as directors or officers of this company.

5. That said defendants each and all be restrained from selling or in any other manner disposing of all or any of the capital stock of the Presidio Mining Company held by them, or either or any of them, individually or as trustees, or directly or indirectly held by them; that said stock be deposited with the clerk of this court, subject to its orders and decrees.

6. That said defendants, and each of them, return to this corporation all salaries received by them from the treasury of the Presidio Mining Company since January, 1913. That Wm. S. Noyes be required to return the sum of \$200 per [301] month excess salary paid to E. M. Gleim without authority from January and August, 1913.

7. That said defendants, each, every and all, be held to be trustees for the benefit of said Presidio Mining Company and its minority stockholders, as to any and all profits, benefits, emoluments, received by them, either directly or indirectly, while connected with said corporation and in its employ, and other than salaries.

8. That said defendants be required to make restitution to said Presidio Mining Company and its minority stockholders for such amount as may be ascertained to be due.

9. That if any profits and benefits obtained by any of the defendants, other than Wm. S. Noyes, have been used for the purchase of other properties or other investments, that such properties and investments be declared to be held by them, or either or any of them, in trust for the Presidio Mining

Company and its minority stockholders, and that accounting be required therefor.

10. That said Wm. S. Noyes be prohibited and restrained from transferring title to said Section 5 to any person, or persons, whomsoever; and further, that said Wm. Noyes, be prohibited and restrained from collecting any sum or sums whatsoever on account of any contract or contracts heretofore made by him with the Presidio Mining Company for any part or percentage of any ore mined, extracted, milled or smelted from Section 5 aforesaid; and that he be further restrained from disposing of any ore or bullion, or any sums of money now on hand, derived in any manner from ores mined, extracted, milled or smelted from either the property of the Presidio Mining Company, or from said Section 5.

11. That said Wm. S. Noyes be adjudged to be a trustee of said Section 5, for the benefit of the stockholders of said Presidio Mining Company, as to any and all profits made by him from Section 5, and otherwise, from his profits received directly or indirectly from his connection with said Presidio Mining Company, and other than from his salary of \$450 monthly; that the Court decree that a constructive trust is impressed upon said Section 5 in favor of the Presidio Mining Company; that it be adjudged that Wm. S. Noyes has the legal title, and that the equitable title has been in said Presidio Mining Company to Section 5 since its purchase by Wm. S. Noyes.

12. That said Wm. S. Noyes be required to transfer said Section 5 to the Presidio Mining Company on such terms as equity may require.

13. That if any profits or benefits received by said Wm. S. Noyes have been used for the purchase of other properties or used for other investment, that such properties and investments, together with the accretions thereto, be declared to be held by him in trust for the Presidio Mining Company and its minority stockholders, and said Wm. S. Noyes be required to account therefor. [302]

14. That said capital stock of defendants deposited with the Clerk of this Court be transferred to the treasury of the Presidio Mining Company at the rate of 15 cents per share, to liquidate their indebtedness to this corporation so far as may be according to their several liability to this corporation and its minority stockholders.

15. That all property and assets of said respective defendants be subjected to a lien of judgment against said respective defendants in favor of the Presidio Mining Company and its minority stockholders, subject to the provision of paragraph 14 hereof.

16. That an accounting be had in the premises pursuant to and under the orders of this Honorable Court; that restitution be required from the proper parties defendant to said corporation and its minority stockholders as may appear equitable in the premises to this Court.

17. That complainants have judgment for their costs, to include all costs of traveling, incidental

expenses, and payments made by complainants in investigating the affairs and business of the Presidio Mining Company in connection with this suit, and for damages sustained by complainant Overton for his loss of time and detention from his business interest, and for complainants' counsel fees. That said respective sums be declared to be a first lien on all the property and assets of the corporation, including Section 5, payable as the Court may direct; and if necessary to wind up the affairs of this corporation, that from the sale of its assets said moneys be paid before any distribution be made to its stockholders.

18. That a receiver be appointed by this Honorable Court to take entire charge of the affairs, assets and property of the Presidio Mining Company, wherever situate, for a period of six months, or such further time as the Court direct, with full power and authority to appoint all assistants required. That unless there is an adjustment between all parties to this suit, the majority and minority stockholders of said corporation, within said period, that said receiver so appointed by this Court be authorized to sell the entire property and assets of the Presidio Mining Company, wind up its affairs, including Section 5, and that said Wm. S. Noyes and the other defendants be prohibited from in any way participating in said sale directly or indirectly, or from having anything further to do with the said Section 8 or Section 5, or with the affairs of what is now the Presidio Mining Company.

19. That the complainants may have such other and further judgment and decree as to this Honorable Court may seem equitable in the premises.

WM. F. ROSE and

BRUCE GLIDDEN,

Solicitors for Complainants.

CHARLES CLYDE SPICER,

Of Counsel.

[Endorsed]: Filed Aug. 29, 1916. Walter B. Maling, Clerk." [303]

That thereafter, on the 12th day of December, 1916, this Court, on motion of complainants, made its further "Order for Injunction Pendente Lite," wherein and whereby this Court compelled the defendants, Wm. S. Noyes, B. S. Noyes and L. Osborn, forthwith to deposit with the Clerk of this Court 59,544 $\frac{5}{6}$ shares of the capital stock of the defendant, Presidio Mining Company. That said last-mentioned order is, except as to title of Court and cause, in the words and figures following:

"ORDER FOR INJUNCTION PENDENTE
LITE.

"A motion for injunction *pendente lite* herein having been duly and regularly heard and submitted to this Court, and it appearing that cause exists for the granting of such injunction pending final hearing of this cause, as prayed for:

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED, That an injunction *pendente lite* issue out of this Court, upon giving and filing of a good and sufficient bond in

the sum of Two Thousand Five Hundred Dollars (\$2,500), to be approved by the clerk of this Court, pursuant to the motion heretofore made and submitted herein by complainants, strictly commanding and enjoining, until the further order of this Court, the defendants Wm. S. Noyes, B. S. Noyes and L. Osborn, and each of their and his agents, servants, employees, representatives or attorneys, and all persons acting in aid of them, or either or any of them, from transferring any or all of 59,544 $\frac{5}{6}$ shares of the capital stock of the Presidio Mining Company held by L. Osborn in December, 1912, represented by certificate No. 67 for 57,213 $\frac{1}{3}$ shares, and certificate No. 80 for 2,331 $\frac{1}{2}$ shares of said capital stock, the said original capital stock represented by said original certificates 67 and 80 now standing on the books of this corporation as follows:

Cert. No 131, dated October 21, 1916,

to Wm. S. Noyes, Pledgee of L.

Osborn25,000 shares

Cert. No. 134, dated October 25, 1916,

Frank M. Purcells..... 1,000 shares

Cert. No. 135, dated Oct. 25, 1916, Wm.

S. Noyes..... 1,000 shares

Cert. No. 136, dated Oct. 25, 1916, Wm.

S. Noyes..... 1,000 shares

Cert. No. 137, dated Oct. 25, 1916, Wm.

S. Noyes..... 1,000 shares

Cert. No. 138, dated Oct. 25, 1916, Wm.

S. Noyes..... 1,000 shares

Cert. No. 139, dated Oct. 25, 1916, Wm.

S. Noyes.....15,000 shares

8618 shares additional to the foregoing

45,000 shares being distributed to

Wm. S. Noyes from said original

amounts in various other certifi-

cates 8,618 shares

And $5926\frac{5}{6}$ shares standing in the

name of B. S. Noyes as a part of

Certificate 133, issued October 21,

1916 $5,926\frac{5}{6}$

Total..... $59,544\frac{5}{6}$

It is further ORDERED, ADJUDGED AND DECREED, that said respective parties, Wm. S. Noyes, B. S. Noyes, and L. Osborn, forthwith deposit with the clerk of this Court the foregoing total number of shares, to wit: $59,544\frac{5}{6}$ shares, subject to the further orders of this Court.

Done in open court this 12th day of December, A. D. 1916.

WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed Dec. 12, 1916. Walter B. Maling, Clerk."

That thereafter, on said 12th day of December, 1916, this Court, on motion of the complainants, made its injunction *pendente lite*, which, with the exception of the title of Court and Cause, is in the words and figures following, to wit:

“INJUNCTION PENDENTE LITE.

“United States of America,

Northern District of California,—ss.

The President of the United States of America, to
Wm. S. Noyes, B. S. Noyes, and L. Osborn,
Their and Each of his Agents, Servants, Em-
ployees, Representatives or Attorneys, and
Each of Them, GREETING:

Whereas, on this 12th day of December, A. D. 1916, an order in the above-entitled court and suit was made, directing that an injunction *pendente lite* issue herein, and wherein and whereby it was ordered, adjudged and decreed that Wm. S. Noyes, B. S. Noyes and L. Osborn, and their and each of his agents, servants, employees, representatives or attorneys, and each of them, be enjoined and restrained from transferring [305] to any persons whomsoever all or any portion of a total aggregate of 59,544 $\frac{5}{6}$ shares of the capital stock of the Presidio Mining Company held by L. Osborn in December, 1912, pending the determination of this suit, and also that said respective parties deposit with the clerk of this court a total 59,544 $\frac{5}{6}$ shares of said capital stock;

Now, Therefore, in accordance with the terms of said order directing that an injunction *pendente lite* issue in said suit, we hereby strictly command and enjoin you, and each of you, the said Wm. S. Noyes, B. S. Noyes and L. Osborn, you and each of your agents, servants, employees, representatives or attorneys, and all persons acting in aid of you, or either or any one of you from transferring,

directly or indirectly, all or any part or portion of said aggregate number of $59,544\frac{5}{6}$ shares of the capital stock of the Presidio Mining Company, and we do hereby further strictly command and enjoin the Presidio Mining Company, its officers or agents, directly or indirectly, to refrain from transferring all or any part or portion of said $59,544\frac{5}{6}$ shares of the capital stock of said company; and we likewise hereby command that you and each of you forthwith deposit with the clerk of this court the following shares of stock now standing in the names of the following parties:

Cert. No. 131, dated Oct. 21, 1916, Wm.

S. Noyes, Pledgee of L. Osborn..25,000 shares

Cert. No. 134, dated Oct. 25, 1916,

Frank M. Parcels..... 1,000 shares

Cert. No. 135, dated Oct. 25, 1916, Wm.

S. Noyes..... 1,000 shares

Cert. No. 136, dated Oct. 25, 1916, Wm.

S. Noyes..... 1,000 shares

Cert. No. 137, dated Oct. 25, 1916, Wm.

S. Noyes..... 1,000 shares

Cert. No. 138, dated Oct. 25, 1916, Wm.

S. Noyes..... 1,000 shares

Cert. No. 139, dated Oct. 25, 1916, Wm.

S. Noyes.....15,000 shares

And in addition to said 45,000 shares, that Wm. S. Noyes deposit 8,618 shares, and B. S. Noyes $5,926\frac{5}{6}$ shares, pending the determination of this suit; which commands and injunction you and each of you are respectively required to observe and obey

until other or further orders of said District Court shall be made in the premises.

WITNESS the Honorable WILLIAM C. VAN FLEET, Judge of said District Court, this 12th day of December, in the year of our Lord one thousand nine hundred and sixteen, and of our Independence the one hundred and forty-first.

[Seal]

WALTER B. MALING,
Clerk.

Deputy Clerk.” [306]

The trial of this cause was commenced on the 16th day of March, 1916, and said trial was concluded on the 29th day of August, 1916, and was on said day argued and submitted to the Court for decision upon briefs. That thereafter, on the 3d day of December, 1917, this Court rendered its oral opinion and decision in favor of the complainants and against these defendants. That said oral opinion was entered herein on the 12th day of February, 1918, reference to which is hereby made. That in and by said decision, this Court found that the property known as Section 5 to be in equity the property of the Presidio Mining Company, and further directed the appointment of a receiver of the corporation, the Presidio Mining Company, and of said Section 5. That in and by said opinion, this Court further directed an accounting to be taken by the Master in Chancery to ascertain the amount due from the defendants, other than the Presidio Mining Company, to said Presidio Mining Company.

That thereafter, on the 28th day of December, 1917, the defendants herein filed their petition and motion, and notice of motion, to reopen this cause; that said petition and motion was made upon all the papers, pleadings, files and proceedings in this cause, upon the evidence and testimony theretofore taken and received in this cause, upon said petition and motion, and upon the affidavits of L. Osborn, L. M. Doherty, William Osborn, R. T. Harding, James D. Ralph, John W. F. Peat and B. S. Noyes, which were attached to said petition and motion, and marked exhibits "A," "B," "C," "D," "E," "F," and "G" respectively, and made a part of and incorporated in said petition and motion as a part thereof, and are here referred to. [307]

That thereafter, on the 21st day of January, 1918, the complainants filed objections to the defendants' motion to reopen this cause, to which reference is hereby made, and also to the affidavits attached to said complainants' objections to defendants' motion to reopen this cause. That at the same time, the complainants made a motion for the appointment of a receiver herein, and that on the 21st day of January, 1918, this Court denied the defendants' motion to reopen this cause, and continued the complainants' motion for the appointment of a receiver, to January 28, 1918.

That on said 28th day of January, 1918, these defendants filed objections to the appointment of a receiver herein, which said objections, with the exception of the title of court and cause, are in the words and figures following, to wit:

“Now come the defendants and object to the appointment of a receiver herein, and for grounds of objection respectfully show to this Honorable Court:

That the appointment of a receiver is not necessary to protect the interests of the complainants or of any of the stockholders of the Presidio Mining Company under the terms of the interlocutory decree directed to be entered herein in pursuance of the oral opinion of the Court made herein on the third day of December, 1917.

In support of this contention, the defendants respectfully submit for the consideration of the Court the following facts:

That all of the relief to which the complainants are entitled under said oral opinion, against the defendants is:

- (1) A conveyance from Wm. S. Noyes to the Presidio Mining Company of Section 5.
- (2) A money judgment in favor of the Presidio Mining Company in the sum of \$63,336.20, the amount received by Wm. S. Noyes on account of Section 5, less the sum of \$24,009.33 paid by him as the purchase price of said Section 5; less also the sum of \$1,500.60 paid by him for taxes levied and assessed against [308] Section 5; and less also \$10,689.75, the amount of the Osborn shortage.

That as of the date of January 25th, 1918, the amount of the judgment to be entered against these defendants under said oral opinion, including all

moneys paid Wm. S. Noyes on account of Section 5, and also the Osborn shortage, principal and interest, aggregates the sum of \$44,798.35. This sum does not include the costs of suit and counsel fees, nor sums which may be recovered on account of alleged excessive salaries and other matters hereinafter mentioned.

That these defendants are the owners of 92,433 $\frac{1}{2}$ shares of the capital stock of said Presidio Mining Company out of a total of 150,000 shares. In round figures, which favor the stockholders other than the defendants, 40 per cent of said judgment will be in favor of the stockholders of said company other than the defendants, and 60 per cent thereof will be in favor of the defendants themselves. Forty per cent of said sum of \$44,798.35 is the sum of \$17,919.34, the amount which the complainants and all other stockholders, other than the defendants, are entitled to recover from these defendants, as far as now ascertained by this Court. As against the sum of \$17,919.34, these defendants respectfully show that the Presidio Mining Company now has

- (1) In cash and bullion in San Francisco, the sum of \$63,912.03;
- (2) In Liberty Bonds, the sum of \$25,000.00;
- (3) Cash in Savings Bank at Marfa, Texas, the sum of \$15,000.00;
- (4) Cash in Marfa National Bank, Marfa, Texas, the sum of \$43,154.46;
- (5) Supplies on hand at the mine at Shafter, Texas, as of January 1, 1918, the sum of \$45,183.50,

making a total of net liquid assets of \$192,249.99.

That there is no indebtedness or charge against said last-mentioned sum, except the operating cost for the month of January, 1918, running at the rate of about \$800 per day, and the income tax and excess profits tax to be levied under the recent act of Congress, amounting to about \$50,000.

Defendants further state that on the assumption that Section 5 will finally be adjudged to be the property of the Presidio Mining Company, the company could now, with business prudence, declare a dividend to the stockholders dividing the sum of \$100,000; and that these defendants, as directors of the Presidio Mining Company, are ready and willing to pay into this court, in cash and Liberty Bonds, the sum of \$100,000 and to stipulate the sum of \$61,155.60, representing their equitable interest, as stockholders in the Presidio Mining Company, in said fund of \$100,000, may be held [309] by this Court as a bond to insure the payment of any money judgment which the complainants may recover, either for the benefit of the Presidio Mining Company, or for the benefit of themselves, as and for costs and counsel fees in this suit.

This will leave, in the hands of this Court, the sum of \$43,236.32, to satisfy any judgment which may be rendered herein against these defendants, or any of them, by reason of alleged excessive salaries, the Gregg & Gleim Tramway contract, boarding-house contract, wood contracts, or other like matter.

These defendants therefore contend, and respectfully represent to this Court that it is not necessary to appoint a receiver herein to insure the payment

of any final money judgment which may be entered herein against these defendants.

In regard to Section 5, these defendants state that heretofore, on the 30th day of December, 1915, this Court made an order restraining the defendant Wm. S. Noyes from transferring said Section 5, or any interest therein, or from in any manner clouding the title thereto, and also restraining these defendants from paying any money to Wm. S. Noyes on account of Section 5. That a certified copy of said restraining order has been recorded in the Recorder's office of the County of Presidio, in the State of Texas, where said property is situated.

The defendants therefore respectfully represent to this Court that it is not necessary to appoint a receiver herein to maintain the *status quo* in regard to Section 5.

As a further objection to the appointment of a receiver herein, these defendants respectfully represent to this Honorable Court that it is not true, as declared in its said oral opinion, that the income of the Presidio Mining Company has been dissipated.

In this behalf, these defendants state that on the first day of January, 1913, the total net liquid assets of the Presidio Mining Company, consisting of bullion and supplies, were in 1913 inventoried at \$38,203.38, but for which the Company realized only the sum of \$25,884 and no more. That in the five years of the administration of these defendants as directors of said corporation, the assets of said corporation have been increased in value in the sum

of \$303,402.27, and as of January 24, 1918, consisted of the following items:

Cash and bullion in San Francisco	\$63,912.03
Liberty Bonds	25,000.00
Cash in Savings Bank, Marfa, Texas . .	15,000.00
Cash in Marfa National Bank, Marfa, Texas	43,154.46
Mining Supplies at Shafter, Texas	45,183.50
Permanent equipment since Jan. 1, 1913	157,036.28
<hr/>	
Total	\$349,286.27

[310]

That an itemized statement of the permanent equipment is hereto attached, marked exhibit "A" and made a part hereof.

That on the assumption that Section 5 will finally be adjudged to be the property of the Presidio Mining Company, said corporation is free from all indebtedness, and that there is now no charge against the aforesaid assets, except the current operating expenses of about \$800 per day for the month of January, 1918, and the income and war tax hereinabove mentioned.

That the above-mentioned increase in assets has been the result of the mining operations carried on by these defendants as directors of said corporation, without calling upon the stockholders to contribute one cent through assessment or otherwise.

These defendants further represent that the appointment of a receiver is unjustified, because there is no controversy here that these defendants have mismanaged the mining affairs of said corporation,

or that they have not conducted those affairs of said corporation as economically as possible; but on the contrary, the entire controversy has involved the ownership of Section 5, and the question whether the salaries of some of the defendants were too high. In regard to the management of the mining properties of the corporation, these complainants make the following admission in their original bill of complaint, on page 11, lines 7 to 13 thereof:

‘that on or about March 24, 1915, said W. S. Overton interviewed L. Osborn and Wm. S. Noyes, Secretary and General Manager, respectively, of said corporation; that thereafter on his way back East, said W. S. Overton stopped at the said Presidio Mine in Texas, and then and there first noticed the excellent equipment of said plant and the organization and efficiency of the employees and the operations of said mine and mill’;

These defendants state that the complainants omitted said admission from their amended bill of complaint, realizing that the same was fatal to their design to throw the company into the hands of a receiver; but on the trial of said cause no evidence was attempted to be offered by them to in anywise contradict the aforesaid admission.

These defendants further state that no better showing can be made by any mining corporation operating under similar environments in the United States.

That there is serious danger to the welfare of the Presidio Mining Company in placing the mining

operations in the hands of a stranger, no matter how capable such person may be, for the following reasons:

- (1) The mine possesses peculiar geological conditions, [311] a knowledge of which can only be obtained by long experience in that mine;
- (2) The mine and mill are in an isolated position, in a barren country 45 miles from railroad and only 15 miles from the Mexican border;
- (3) An intimate knowledge of the conditions and temper of the Mexican workmen and residents is necessary to the safety of life and property;
- (4) The hauling of oil and other supplies has always been a source of trouble, owing to the fact that there is a scarcity of teams and trucks in the surrounding country and in the case of emergency freight, long acquaintance and friendly relations are necessary in order to procure the service when needed.

Respectfully submitted,

R. T. HARDING and

HENRY E. MONROE,

Solicitors for Said Defendants.

J. J. DUNNE,

Of Counsel.

United States of America,

Northern District of California,

City and County of San Francisco,—ss.

B. S. Noyes, being first duly sworn, on oath deposes and says: That he is one of the defendants in the above and within entitled action; that he has read

the foregoing defendants' objections to the appointment of a receiver and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information or belief, and as to those matters that he believes it to be true.

B. S. NOYES.

Subscribed and sworn to before me this 28th day of January, A. D. 1918.

[Notarial Seal]

M. A. BRUSIE,

Notary Public in and for the City and County of San Francisco, State of California.

EXHIBIT "A" TO THE DEFENDANTS' OBJECTIONS TO THE APPOINTMENT OF A RECEIVER.

PERMANENT IMPROVEMENTS

Installed at the PRESIDIO MINE Between Jan. 1, 1913 and Dec. 31, 1917.

1913.

Cyanide Plant Cost.....\$33,582.39

Surface Tracks 7,359.25 \$40,941.64

[312]

1914.

Rope Tramway\$24,772.04

New Crusher at Mine..... 770.00

Water System at Mine.... 1,178.58

100 H. P. De La Vergne

Engine at Mill..... 9,772.62

Electrically Driven Pump

Installation 1,855.93

Machine-shop	1,872.17	
Extra Zinc Box in Mill....	360.00	
Friction Clutches for Tube		
Mills	454.30	
Vacuum Pump for Filter..	461.73	
Extra Elevator in Mill....	596.80	\$42,094.17

1915.

1 Electric Generator, no amount....		
1 12x12 Air-compressor, no amount..		
3 New Classifiers, no amount.....		9,683.00
Alterators to Tube Mill Bearing Fil-		
ter Pumps and Old Air Compressor		
(Annual Report 1915, page 5)		
(All in the Mill)		

1916.

Large Steel Plate Jaw		
Crusher, 1 30 H. P. Oil		
Engine (Mine).....	3,500.00	
New Zinc Box, Large Melt-		
ing Furnace		
Machine Tools in Machine-		
shop (Mill)	2,200.00	5,700.00

1917.

MINE.

Oil Engines in Power-		
house	\$23,985.82	
Power-house Belting..	4,882.92	
Drill Sharpening Ma-		
chine, Forge, Belting	2,114.88	
Electrical Apparatus,		
Mine Power House.	3,977.33	

Air-compressor, Mine	
Power-house	2,459.82
Water Cooling Plant..	2,397.16
Auxiliary Equipment,	
Mine Power-house ..	7,265.68
Oil-Storage House.....	1,058.46
New Hoist at South	
Shaft	2,986.80

MILL.

Additional Quarters for		
Employees and Garage	3,112.64	
Oliver Filter	4,375.96	58,617.47
	<hr/>	<hr/>
		\$157,036.28''

[313]

That complainants filed an answer to defendants' objections to the appointment of a receiver, on the 1st day of February, 1918, reference to which is hereby made, and wherein said complainants contended that defendants' said objections were misleading, and claiming that of said sum of \$192,249.99 set forth in defendants' objections to the appointment of a receiver as assets of the defendant Presidio Mining Company, at least \$35,000, or one month's expenses were to be deducted, and that \$50,000 and upwards for income tax would have to be deducted. That to the answer of complainants to defendants' objections to the appointment of a receiver, were attached the affidavit of W. S. Overton, and fifteen exhibits to said affidavit, reference to which is here made.

That thereafter, on the 16th day of February, 1918, this Court duly gave and made its interlocutory decree herein in pursuance of said oral opinion, and on the 20th day of February, 1918, duly gave and made its further interlocutory order or decree appointing a receiver herein, which said Order appointing said Receiver is, with the exception of the title of Court and cause, in the words and figures following, to wit:

“Complainants’ motion for appointment of a receiver having been heretofore heard and submitted, and it appearing that special reasons exist why Walter B. Maling, Clerk of the above-entitled District Court, be appointed Receiver herein, to wit: That the respective complainants and defendants have agreed, pursuant to their stipulation heretofore filed herein, and have requested that he be appointed; it further appearing that said respective complainants and defendants have not reached any agreement for the appointment of any other person to serve as receiver; that the appointment of said Walter B. Maling will not interfere with his duties in office as clerk of this court; that he is familiar with the facts in this suit and is well qualified and competent to serve, and that it will be for the benefit of all parties that he act as such receiver;

Now, therefore, said special reasons existing, and [314] good cause appearing therefor, IT IS HEREBY ORDERED:

1. That Walter B. Maling be and he is hereby appointed Receiver of Presidio Mining Company, including the Presidio Mine, known as Section 8,

Presidio County, State of Texas, and Section 5, adjoining said Section 8, together with the Presidio mill, and all improvements, appurtenances and equipment connected with said Sections 8 and 5, and all the real and personal property of said corporation of every kind and nature wherever situated, with full power to act in all particulars in the place and stead of the directors and officers of said corporation, pursuant to law in such cases made and provided, and after proper ancillary proceedings have been had where and when the same shall be required.

Said Receiver is hereby authorized and directed to take immediate and exclusive possession of said Presidio Mining Company, its office, Room 209, 255 California Street, San Francisco, California, its assets, books, records and papers, to continue, control, carry on and conduct its business in all its ramifications, including the mining, milling, handling its ores, selling its bullion, and to discharge the duties obligatory on said corporation;

2. IT IS FURTHER ORDERED That said Receiver be and he is hereby authorized and directed to operate said Presidio Mine in and on Section 8, and Section 5, the milling and reduction plant of said corporation, and manage said properties in such a manner as will in his judgment produce the most satisfactory results consistent with the discharge of the duties imposed thereon; to collect and receive all the income therefrom, and for such purpose is hereby invested with full power in his discretion to employ, discharge, fix compensation of any

and all agents, attorneys, managers, superintendents and employees as may be necessary to aid in the discharge of his duties.

Said Receiver is fully authorized and empowered to make such investigations, institute and prosecute such suit, as may be necessary in his judgment for the recovery of moneys or other assets belonging to said corporation, or for the proper protection of the said properties and trusts hereby vested in him, and to likewise defend all such actions instituted against him as such Receiver, the prosecution or defense of which in his judgment will be necessary for the proper protection of the said property placed in his charge, or benefit, or increase the assets of said corporation. He is further empowered to take any and all steps by ancillary or other legal proceedings required by law in the proper courts and jurisdictions to obtain full and complete authority to carry out the orders and provisions herein contained.

3. IT IS FURTHER ORDERED: That the defendants, their and each of their agents, directors officers, servants, representatives, the employees of Presidio Mining Company, and all other persons, be and the same are hereby required and commanded to turn over and deliver to such Receiver or his duly constituted representatives any and all property real or personal, or held in trust, belonging to said corporation, [315] and also Section 5, including books, records and papers of said corporation; said B. S. Noyes and Wm. S. Noyes are likewise ordered to turn over any and all books, records, documents and papers in their possession or under their con-

trol, pertaining to the business of said Presidio Mining Company or Section 5; and each, every and all such directors, officers, agents, employees or persons are hereby commanded and required to obey and conform to such orders as may be given to them from time to time by such Receiver or his duly constituted representatives in conducting the operations of said Presidio Mining Company, its properties, Section 5, and in discharging his duties as such Receiver.

Said defendants, their, and each of their agents, or representatives, and all other persons are hereby restrained and enjoined from interfering in any manner whatever with the possession or management or operation of any part of the said properties over which said Receiver is hereby appointed, or interfering in any manner to prevent the discharge of his duties under this order.

4. IT IS FURTHER ORDERED: That said Receiver continue in office pursuant to the terms and under the conditions herein mentioned, until the final termination of this suit, or until otherwise ordered by this Court.

5. IT IS FURTHER ORDERED: That said Receiver, within the next thirty days file with the clerk of this Court a proper undertaking with satisfactory sureties, to be approved by this Court, in the sum of Ten Thousand Dollars, conditioned for the faithful discharge of his duties, and to account for all the funds coming into his hands, according to the order of this Court.

Dated February 20th, 1918.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Feb. 20, 1918. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk."

That thereafter, these defendants and each and all of them, appealed to the United States Circuit Court of Appeals in and for the Ninth Circuit, from said Interlocutory Decree and from said interlocutory order or decree appointing a Receiver herein. That in due course said appeal was perfected and was argued and submitted upon briefs to the said United States Circuit Court of Appeals, and that thereafter, on the 27th day of October, 1919, the said Circuit Court of Appeals duly rendered [316] its decision in this case, reversing in part, and affirming in part, the interlocutory decree of this Court, and reversing in full the interlocutory order or decree appointing a Receiver herein, and discharging the interlocutory injunctions theretofore given and made by this Court.

That in pursuance of said opinion of said Circuit Court of Appeals, and on the 27th day of October, 1919, the judgment or decree of said Circuit Court of Appeals was duly entered, which, with the exception of the title of Court and cause, is in the words and figures following, to wit:

“DECREE U. S. CIRCUIT COURT OF AP-
PEALS.

Appeal from the Southern Division of the District
Court for the Northern District of California,
Second Division.

This cause came on to be heard on the Transcript of the Record from the Southern Division of the District Court of the United States for the Northern Division of California, Second Division, and was duly submitted:

On consideration whereof, it is now here ORDERED, ADJUDGED AND DECREED by this Court, that that part of the interlocutory decree of the said District Court providing:

‘That in and by said final decree the said William S. Noyes shall be ordered and directed within thirty (30) days from the date thereof to transfer said Section 5 to said Presidio Mining Company by proper deed free and clear of all liens and encumbrances.’

will stand affirmed.

That part of the said decree relating to the payment of the purchase price of the property to William S. Noyes providing:

‘That said William S. Noyes be credited with the purchase price of Section 5, together with interest thereon at the rate of seven per cent per annum from January 25, 1913, and also any sums which may be found to have been paid by said William S. Noyes for the use and benefit of said Presidio Mining Company, together with interest on said sums at the rate of seven per cent per annum from the date of payments’ will stand affirmed. [317]

That part of said decree will run against the Presidio Mining Company and its officers and directors and will be as of the date of February 16,

1918. The amount due thereon to be ascertained by a reference to the accountants Klink, Bean & Co.

The final decree will also provide for the payment to William S. Noyes the amount due him under the lease of November 19, 1913, from January 25, 1913, to February 16, 1918. The amount to be ascertained by a reference to the accountants Klink, Bean & Co., with direction to extend and complete their schedules as they appear in the record and are there numbered, 4, 5, 6, 7, 8, and 9, so as to include in like manner, but in a condensed form, all royalties due and payable to William S. Noyes for the years 1916, 1917, down to February 16, 1918.

In this computation Wm. S. Noyes will be charged with \$3,500, which we find was in effect paid to him on September 6, 1913, and was applied by his direction to make good a further shortage in the accounts of L. Osborn. This amount is included in the statement made by Noyes that up to December 31, 1915, he had received \$63,336.20. To the amount thus found due William S. Noyes under the lease of November 19, 1913, will be added the amount found due him on the purchase price of Section 5, and for the full sum so found due him the final decree will run against the Presidio Mining Company, its officers and directors. The said interlocutory decree of the said District Court in all other respects not herein mentioned will be reversed and set aside, the interlocutory injunction dissolved and the receiver discharged. The plaintiffs and defendants will each pay their own costs in this court."

[Endorsed]: Decree. Filed and entered October 27, 1919. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk."

That the opinion of said Circuit Court, of Appeals, upon which said judgment is based, is reported in Volume 261 of the Federal Reporter, at page 933, to which reference is here made.

That thereafter, upon the petition of the complainants, a rehearing of this cause was granted in the said Circuit Court of Appeals, and that thereafter, said cause was reargued and resubmitted upon briefs, and that thereafter, on the 17th day of January, 1921, said Circuit Court of Appeals duly rendered its decision in this cause, reaffirming its former opinion and judgment, and again reversing in part and affirming in part, [318] the interlocutory decree of this Court, and reversing in whole the interlocutory order or decree appointing a receiver herein, and discharging the interlocutory injunctions heretofore given and made by this Court. That thereafter, and on the same day and in pursuance of said last-mentioned opinion of said Circuit Court of Appeals, the judgment or decree of said Circuit Court of Appeals was duly entered, which, with the exception of title of Court and cause, is in the words and figures following, to wit:

"Our former judgment (261 Fed. 933-965) is reaffirmed and will be re-entered as follows:

"That part of the interlocutory decree providing that in and by said final decree the said William S. Noyes shall be ordered and directed within 30 days from the date thereof to transfer said Section 5

to said Presidio Mining Company by proper deed free and clear of all liens and encumbrances' will stand affirmed.

That part of the decree relating to the payment of the purchase price of the property to William S. Noyes, providing, 'that said William S. Noyes be credited with the purchase price of Section 5, together with interest thereon at the rate of 7 per cent per annum from January 25, 1913, and also any sums which may be found to have been paid by said William S. Noyes for the use and benefit of said Presidio Mining Company, together with interest on said sums at the rate of 7 per cent per annum from the date of payments,' will stand affirmed.

That part of the decree will run against the Presidio Mining Company and its officers and directors, and will be as of the date of February 16, 1918; the amount due thereon to be ascertained by a reference to the accountants, Klink, Bean & Co.

The final decree will also provide for the payment to William S. Noyes of the amount due him under the lease of November 19, 1913, from January 25, 1913, to February 16, 1918; the amount to be ascertained by a reference to the accountants, Klink, Bean & Co. with direction to extend and complete their schedules as they appear in the record and are there numbered 4, 5, 6, 7, 8, and 9, so as to include in like manner, but in a condensed form, all royalties due and payable to William S. Noyes for the years 1916, 1917, and down to February 16, 1918.

In this computation Wm. S. Noyes will be charged with \$3,500, which we find was in effect paid to him

on September 6, 1913, and was applied by his direction to make good another shortage in the accounts of L. Osborn. This amount is included in the statement made by Noyes that up to December 31, 1915, he had received \$63,336.20. To the amount thus found due William S. Noyes under the lease of November 19, 1913, will be added the amount found due him on the purchase price of Section 5, and for the full sum so found due him the final decree will run against [319] the Presidio Mining Company, its officers, and directors.

The interlocutory decree in all other respects not herein mentioned will be reversed and set aside, the interlocutory injunction dissolved, and the receiver discharged. The plaintiffs and defendants will each pay their own costs in this court."

That thereafter, said complainants in this cause filed their petition in the Supreme Court of the United States, for a writ of *certiorari* to the U. S. Circuit Court of Appeals of the Ninth Circuit, but that said petition was denied by the Supreme Court of the United States, and that thereupon a mandate in this cause issued out of the said U. S. Circuit Court of Appeals, which said mandate was and is in the words of the aforesaid judgment entered in said Circuit Court of Appeals.

That the opinion rendered by said Circuit Court of Appeals herein upon the rehearing of said cause, is reported in Volume 270 of the Federal Reporter, at page 388, and that reference thereto is here made. That in reference to the objections of these defendants to the appointment of a Receiver herein, which

are hereinabove set forth, commencing with line 11 on page 29, down to and including line 28 on page 34, the said Circuit Court of Appeals in its said opinion upon rehearing herein makes the following statement and findings, to wit:

“There is an order in the decree appointing a receiver to take possession of all the property of the corporation including Section 5 and operate the same in all its departments and ramifications as a mining and milling property. The corporation was not insolvent nor in any danger of insolvency, but was a going concern in a high state of efficiency as shown by defendants’ objections to the appointment of a receiver, and the accompanying statement filed January 28, 1918, summarized as follows:

The total liquid assets of the Presidio Mining Company, consisting of bullion and supplies, were in 1913 invoiced at \$38,203.28, but for which the company realized \$25,884.

On August 28, 1916, three years after the new plant had commenced operations (with the exception of the tramway) the [320] company had on hand the following:

1. The cyanide plant all paid for	\$ 79,359.03
2. Mining supplies at Shafter	30,627.78
3. Bullion in transit	3,600.00
4. Bullion at the Selby Refinery	11,167.75
5. Cash in San Francisco	7,741.97
6. Cash at Shafter	32,438.94
<hr/>	
Total	\$164,935.47

And all this was accomplished by Noyes upon his own credit, without the levying of a single assessment upon the stockholders.

In the five years of the defendants' administration of the property as directors of the corporation, the assets of the complainants had increased in value to the sum of \$349,285.27 as of the date of January 24, 1918, consisting of the following items:

Cash and Bullion in San Francisco	\$ 63,912.03
Liberty bonds	25,000.00
Cash in Savings Bank, Marfa, Texas . .	15,000.00
Mining Supplies at Shafter, Texas	45,183.50
Permanent equipment since Jan. 1, 1913	157,036.28

Total	\$349,286.27
-----------------	--------------

Deduct from this amount the sum due

Wm. S. Noyes for his one-half of the net proceeds under the terms of the lease of November 19, 1913, estimated as of the date above at	\$110,000.00
--	--------------

\$239,286.27

The complainants' only answer to the first mentioned statement is the assertion that all the alleged assets mentioned in the defendants' objection were on hand because of the injunction granted in the suit and the vigilance of the complainants in guarding the company's welfare. This statement is unsupported by any evidence in the record. The injunction *pendente lite* was issued December 12, 1916, after the property had been operating under the management of Wm. S. Noyes for nearly four

years under the leases of January 25, 1913, and November 19, 1913. During this time at least four-fifths of the assets of the company were accumulated; but assuming that this answer is in some degree true, it was not alleged that the injunction was to be dissolved or that the alleged vigilance of the complainants in guarding the company's welfare was to be withdrawn. On the contrary, the objection to the appointment of a receiver was based upon the assumption that the injunction was to be continued and that Section 5 would finally be adjudged to be the property of the Presidio Mining Company with a decree for its conveyance to the company. On that assumption defendants urged as a ground for their opposition to the appointment of a receiver that—

‘Defendants further state that on the assumption that Section 5 will finally be adjudged to be the property of the Presidio Mining Company, the company could now, with business prudence, declare a dividend to the stockholders dividing the sum of \$100,000; and that these defendants, as directors of the Presidio Mining Company, are ready and willing to pay into this court, [321] in cash and Liberty Bonds the sum of \$100,000 and to stipulate the sum of \$61,155.60, representing their equitable interests, as stockholders in the Presidio Mining Company in said fund of \$100,000, may be held by this court as a bond to insure the payment of any money judgment which the complainants may recover, either for the benefit of the Presi-

dio Mining Company, or for the benefit of themselves as and for costs and counsel fees in this suit.'

Why was not this offer sufficient security for any decree that might be entered in the case?

There is incidentally another objection to defendants' opposition to the appointment of a receiver in the statement of the assets of the corporation. It is alleged by the complainants that these assets were subject to deductions, among others, that there must be a deduction of \$50,000 and upwards for income taxes. If, as is here asserted by the complainants, the corporation was liable for at least \$50,000 income taxes for the preceding year under the federal income tax law, then there must have been a net income of considerable proportion to call for such a tax. This item alone would seem to be sufficient to establish the fact that the Presidio Mining Company, when the appointment of a receiver was applied for, was a going concern of considerable efficiency engaged in profitable mining operations under the Noyes management.

As Wm. S. Noyes had been ready and willing at all times since he had become the owner of Section 5 on May 26, 1913, to convey it to the Presidio Mining Company upon the payment of the purchase price, it is difficult to see what substantial or equitable matter remained for a decree in equity to operate upon. There is nothing in the evidence calling for a decree in accordance with the amended prayer to the amended bill of complaint that a receiver be appointed to take charge of all the affairs and

business of the company authorizing him to sell the entire property and assets of the corporation, wind up its affairs, including Section 5, prohibit Wm. S. Noyes and the other defendants from in any way participating in the sale, either directly or indirectly, and from having anything further to do with said Section 8 and Section 5 and with the affairs of the corporation.

We find nothing which justifies any decree other than a decree for conveyance of Section 5 by Noyes to the company upon payment of the purchase price in accordance with his offer.” [322]

These defendants further represent to this Honorable Court that the complainants did not act in good faith in seeking the appointment of said Receiver, but that they, and in particular the complainant W. S. Overton, prosecuted this cause and sought the appointment of said receiver from selfish motives, as is disclosed in the letter from W. S. Overton to Mr. Gleim, Superintendent of the Presidio Mining Company, set forth on page 399 in Volume 270 of the Federal Reporter, in which Mr. Overton says to Mr. Gleim:

“If I ever control the management here I pledge you my word I shall put no spy on you; I wouldn’t insult a man so.”

In regard to this letter, the Circuit Court of Appeals has the following to say, on pages 399-400 of said Federal Reporter, namely:

“The defendants contend that this letter discloses the fact that the real purpose of this suit and the only purpose was to enable Capt. Over-

ton to secure control and management of the company in his own hands and not to serve the interests of the minority or other stockholders in the corporation. In support of this contention the defendants point to the silence of the minority stockholders in this action—they have not asked to be made parties to it—the extraordinary character of the charges of conspiracy and fraud contained in the original and amended bills, and the prayers for relief attached to each. The temporary injunction issued against Noyes restraining him from receiving any money from the company on account of Section 5 and against transferring any title thereto; the amended prayer to the amended bill demanding the removal of all the directors and officers of the company; a sweeping injunction against all their acts as officers of the company; the appointment of a receiver to take charge of all the affairs and business of the company, authorizing him to sell the entire property and assets of the Presidio Mining Company, wind up the affairs of the corporation, including Section 5, prohibiting Wm. S. Noyes and the other defendants from in any way participating in said sale directly or indirectly or from having anything further to do with said Section 8 or Section 5 or with the affairs of the corporation.

This prayer for relief and Capt. Overton's letter to Gleim dated July 29, 1915, appear to have the same object in view, namely, to oust

Wm. S. Noyes and his codefendants from the corporation and deprive them from any further connection with it or interest in its affairs.”

[323]

Our contention in this regard is further confirmed by the following quotation from page 13 of the complainants' brief and petition for a writ of *certiorari* filed by them in the Supreme Court of the United States, and directed to the U. S. Circuit Court of Appeals for the Ninth Circuit, in this cause. They there say that:

“That the issue tendered, and thus reserved for further consideration, was that these frauds by the board of directors, general manager and majority stockholders, placed the corporation in such a position that equity could be done the minority stockholders only by winding up the affairs of the corporation and distributing its assets to all of the stockholders; that ancillary relief was granted first on December 31, 1915, in the form of an injunction prohibiting further payments of money to William S. Noyes, the Superintendent and general manager, under the last contract, and later after the trial, a receiver *pendente lite* was appointed to take over the management of the affairs of the corporation.”

These defendants further state that the total amount of the items excepted and objected to in the foregoing four accounts of said receiver, is the sum of \$57,730.06.

WHEREFORE, these defendants pray that their objections and exceptions to said account of said receiver may be sustained, and the aforesaid items, and each and every one of them, so objected to, be disallowed, by this Honorable Court, and that these defendants may have such other, further, different, and/or additional relief in the premises as may be proper.

Respectfully submitted,

R. T. HARDING,

HENRY E. MONROE,

Solicitors for said Defendants.

J. J. DUNNE,

Of Counsel. [324]

State of California,

City and County of San Francisco,—ss.

B. S. Noyes, being first duly sworn, deposes and says:

That he is one of the defendants named in the foregoing objections to the above-mentioned items in the Receiver's report herein, and that he has read "Defendants' Exceptions and Objections to Fourth and Final Report and Account of Receiver," and knows the contents thereof; and that the same are true of his knowledge, except as to the matters therein stated on information and belief, and that as to those matters, he believes it to be true.

B. S. NOYES.

**Complainants' Answer to Defendants' Exceptions
and Objections to Fourth and Final Report
and Account of Receiver.**

Now come complainants above named and answering the defendants' exceptions and objections to the fourth and final report and account of Receiver, allege:

I.

That by said so-called exceptions and objections, defendants seek to impose costs upon complainants for the receivership expenses without making a motion to tax costs; that said attempt to so tax costs is premature.

II.

Complainants aver that all motions for injunctions and Receiver were made in good faith and on facts which warranted said action at the time when taken; that proper diversity of citizenship exists, and the Court had and has jurisdiction of the parties and subject matter of this suit; that complainants hereby refer to all their motions and applications heretofore filed in this action for injunctions [326] and a receivership, and supporting affidavits, original and supplemental, the files and records appertaining thereto, and by said reference make the same a part hereof as fully as though here set out in full, specifically reserving their right to refer to said files and records herein in any and all appeals or other proceedings which may hereafter be taken herein by either or any of the parties in this suit.

III.

That complainants' original motion for the appointment of a Receiver and injunctive relief, after the filing of amended complaint herein, was filed on or about October 5, 1915, and was based upon affidavits of W. S. Overton, dated July 26th and 27th, 1915, supplemented by his affidavit of October 6th, 1915, and the supplemental affidavits of Frank H. Gardiner, dated December 4, 1915, and J. E. Herger, dated December 6th, 1915, and the reply affidavits thereto; that after full hearing, argument, and submission of said matter, and the facts appearing therein having been duly considered by the Court, injunctive relief was granted, but the receivership denied; that in this connection complainants aver that the ruling of Judge Dooling on the original complaint was made by him because of the absence of the regular Judge from Division No. 2; that the order of said Judge Dooling specifically grants to plaintiffs the right to renew the application for injunctive relief and for a Receiver, and the filing of an amended complaint; that said matter was not again considered by Judge Dooling for the reason that after the filing of the amended complaint the regular Judge was again sitting in Division No. 2; that the said Judge originally hearing the case would have had full jurisdiction and power to again hear [327] the matter had it been brought before him in the regular course of procedure.

IV.

That on or about February 11, 1916, on motion therefor, an order was made permitting inspection

of records, books and documents and the examination of Thiel Detective reports which order was made because defendants controlling the Presidio Mining Company refused to permit complainants access to all the books, records and files of and belonging to the corporation; that the said motion and affidavits, and order of February 11th and all the documents, records and files relative thereto are hereby referred to and by said reference made a part thereof as fully as though here set out in full, complainants hereby reserving their rights to use any and all said documents in any future proceedings upon appeal or otherwise.

That after the submission of this case August 29, 1916, and, to wit, on or about October 21st, 1916, the Noyes Brothers commenced to transfer shares, which had been originally held by L. Osborn and subsequently placed in a voting trust, to third parties; that immediately thereon complainants filed their motion and affidavits to restrain all defendants from transferring any of their shares to third parties in order to enable complainants to enforce any judgment which might be secured in the premises; that it was and is the belief of complainants that transfers were about to be made to remove the original Osborn holdings from the control of the Court and evade enforcement of judgment against him; that on giving proper security, a temporary restraining order was issued by the Honorable Benjamin F. Bledsoe on October 27th; that thereafter on argument in open court and a submission of all the facts, and in consideration of the law in the prem-

ises, an injunction, dated [328] December 12, 1916, was duly ordered, given and issued on the furnishing of a \$2,500.00 bond by complainants, commanding the defendants to refrain from in any way transferring the stock described in said injunction and compelling them to deposit the same with the Clerk of this court, but only to the extent of the 59,544 $\frac{5}{6}$ shares designated as the original Osborn holdings and which were being split up and transferred to other parties; that all the motions, affidavits, files and proceedings relative to said injunction are hereby referred to and by said reference made a part hereof as fully as though here set out in full, complainants reserving the right to use said documents on appeal or otherwise hereafter.

V.

That after the decision in this case on December 3, 1917, and the announcement by the Court that a Receiver would be appointed, which said Receiver was appointed on February 20, 1918, over the objection of defendants, at no time after said appointment did defendants ever make a motion to discharge the Receiver or attempt to remove him from office by the filing of a supersedeas bond, nor did they or any one of them take any steps whatsoever to cause the Receiver's removal from office by any of the methods provided by law, but failed, neglected and refused so to do.

That at the time of the appointment of said Receiver the facts of said case had disclosed that L. Osborn had embezzled the corporate funds and his embezzlements had been concealed by all the in-

dividual defendants, as directors and officers, from stockholders of the corporation, other than themselves; that said Osborn had been paid a salary while stealing the corporate funds; that when about to be arrested he had been incarcerated in Agnew State Hospital apparently in order to [329] prevent his being punished for his crimes; that the Assistant Secretary Peat, had been receiving a salary as such without rendering any service whatsoever to the company; that both of said last-named parties as directors had been giving their votes to carry out the contracts made by W. S. Noyes relative to Section 5 through his control of the company directorate of which he was one; that said W. S. Noyes had acquired Section 5 while the confidential and fiduciary agent of the Presidio Mining Company in full charge of its property and alone knowing the full facts and value of said Section 5 other than possibly E. M. Gleim under his control as superintendent at the mine; that said Noyes had given promissory notes to pay for section 5, which he had acquired for Twenty-four Thousand Nine and 33/100 (\$24,009.33) Dollars and then in the control of said section 5 as owner had contracted with himself on the one hand, and with the Presidio Mining Company which he likewise controlled on the other hand, for the payment of fifty (50) cents a ton royalty on ores taken from Section 5, a Forty-five Thousand (\$45,000.00) Dollar bonus to be paid him for obtaining said lease with himself, and subsequently a fifty-fifty contract on ores extracted from Section 5 with a differential of one (\$1.00) dollar

per ton in his favor after the title had been transferred from the Silver Hill Mill and Mining Co. to his own name; that by reason of the contracts so made while controlling the Presidio Mining Company on the one hand and having secured the title to Section 5 in himself while a fiduciary on the other, and the trial Court having found that section 5 belonged to the corporation and directed him to transfer Section 5 to the Presidio Mining Company, it was within the sound discretion of the Court to appoint a Receiver in order to protect the stockholders of the corporation against manipulations of the [330] property which was controlled by said W. S. Noyes and who with his associates, was causing the corporation in their control to resist the recovery of Section 5 for itself and for the benefit of all its stockholders.

VI.

Referring to the costs and expenses of said Receiver, these complainants aver that the receiver conducted operations economically and accumulated approximately Five Hundred Thousand (\$500,000) Dollars in cash, securities and bullion in transit during its receivership, paid United States Income taxes of One Hundred and Eighty-two Thousand, Five Hundred and Twenty-two and $23/100$ (\$182,522.23) Dollars in addition to making improvements on the property aggregating about Forty-three Thousand Nine Hundred and Sixty-six and $77/100$ (\$43,966.77) Dollars; that the said receiver turned over to the officials of this company on or about May 7, 1921, Six Hundred and Nineteen Thousand Three

Hundred and Ten and 74/100 (\$619,310.74) Dollars in cash, securities and bullion in transit; that he produced silver at no higher cost per ton than did defendants themselves although labor and materials greatly increased in price; that in 1920 the actual cash cost per ton of ore mined and milled was thirty-nine (39) cents less than in 1917, the year prior to the receivership; that by agreement of the parties he also worked lower grade ores than otherwise might have been worked, thereby not increasing the earnings of the corporation as much as he might have done.

That the complainants approved this course is evidenced by their communications of July 31st and August 24th, 1918, answering the Receiver's suggestion in his communication dated July 29th suggesting that lower grade ores be worked, which [331] information was also communicated to defendants; that after the milling of lower grade ore had been decided on, W. S. Noyes September 2, 1921, sent a commission to the Receiver suggesting this course. That copies of said communications are attached hereto marked exhibits "A," "B," "C" and "D" here referred to and by said reference made a part hereof as fully as though here set out in full.

That during the last year of the receivership the interest alone from invested money in the hands of the Receiver more than paid the cost of receivership during said time, whereas under defendants' management up to the end of December, 1915, nearly six months after the commencement of this suit, when an injunction was granted by the trial

Court, restraining defendants from drawing any further moneys under the bonus and leases to Wm. S. Noyes, defendants paid from the company treasury constant charges for interest, which in 1915 alone amounted to over \$1900. That during the same year, 1915, said corporation paid to W. S. Noyes \$12,025.75 in addition to his salary. That only after the granting of this injunction, December 30, 1915, was the company able to accumulate sufficient cash to avoid being forced to resort to interest payments on bank overdrafts and advances from the Selby Smelter, which last named made two such advances as late as December 9th and 21st, 1915. That when this litigation was initiated, July 26, 1915, said corporation was indebted in the sum of approximately Eighty Thousand (\$80,000.00) Dollars.

That said W. S. Noyes on September 12, 1919, writing to the Receiver relative to certain pillars in the mine, stated:

“This information will be as desirable for you as for all the stockholders, for the reason that if the information above referred to is founded on fact, both you and the stockholders [332] should know it; but if, on the contrary, that information shall prove to be without foundation, as I hope it may, the stockholders will be relieved of any possible fear of menace to their property, and the *last word of encomium* of your administration, which has *been in all other respects beyond* criticism, will have been spoken.”

That said entire letter and reply thereto are attached hereto marked exhibits "E" and "F," here referred to and by said reference made a part hereof as fully as though here set out in full.

That the Receiver was greatly hampered in endeavoring to operate the Presidio Mine during the fall and winter of 1918 and 1919. That for cause he demanded the resignation of E. M. Gleim, the superintendent at the mine under W. S. Noyes, December 1st, 1918. That immediately at, during and after, the period when said resignation was demanded and received, attempt was made to close down the mine through the activities of said E. M. Gleim, and James Sloan, the mine forman. That a copy of the report sent to the Receiver and referring to existing conditions is attached hereto marked exhibit "J" here referred to and by said reference made a part hereof as fully as though here set out in full. That notwithstanding said attempts to embarrass the Receiver the mine and mill were operated and not closed down. That immediately on relinquishment of control by the Receiver, the said Gleim and Sloan, and most of the others leaving the Company employ during this period in 1918, were reinstated in their former positions, and practically all the white employees engaged by the receiver discharged the same evening control was obtained by defendants, irrespective of, and disregarding, the efforts of said former employees to compel the cessation of mining and milling operations to the detriment and damage of the stockholders, had such efforts [333] been successful.

VII.

Referring to the accounting before the Master in Chancery:

Complainants aver that no stay of proceedings on appeal through the filing of a supersedeas bond was sought by defendants; that the hearing before the Master in Chancery proceeded in accordance with the order and decree of this Court; that the said hearing resulted in disclosure of facts showing that W. S. Noyes had received secret side profits directly from business dealings had between the corporation and Benton Bowers, and indirectly through dealings had between company employees and the Gleim Store, which received the miner's wages through arrangements made with Noyes for which W. S. Noyes received four (4%) or five (5%) per cent from the Gleim Store at one time, then one hundred (\$100.00) dollars per month; and in secret side profits made from the mine boarding house, without knowledge of his principal, the Presidio Mining Company; that abstracts of testimony touching these matters are attached hereto marked exhibits "G," "H," "I," here referred to and by said reference made a part hereof as fully as though here set out in full. It likewise disclosed that the Osborn shortages were Fifteen Thousand (\$15,000) Dollars as referred to on pages 30, 31 and 32 of said Master's report; that said report together with all the testimony and proceedings on said accounting, are here referred to, and by said reference made a part hereof as fully as though here set out in full, complainants reserving the right to refer thereto on any

proceedings on appeal or otherwise hereafter had herein; that all of said information so elicited in the hearings before the Master in Chancery is of [334] great value to all the stockholders of Presidio Mining Company in their endeavors to secure redress for any and all wrongful acts done by its officers, and for any derelictions of their duties.

VIII.

Referring to Haskins and Sells, Accountants:

Complainants aver that said accountants were duly engaged after hearings in this court, in order to check up books and records which were not thoroughly checked prior to said time; that said Haskins and Sells, discovered further irregularities in the Company's affairs, amounting to Ten Thousand Five Hundred and Thirty-one and $71/100$ (\$10,531.71) Dollars, as set forth on page 6 of their report; that said irregularities arose out of shipments unaccounted for, of scrap iron and lead ore, and on which hauling or loading charges were paid from the company treasury. Said accountants' report also discloses that the Osborn shortage was Fifteen Thousand Two Hundred and Seven (\$15,207) Dollars instead of Ten Thousand Six Hundred and Eighty-nine and $75/100$ (\$10,689.75) Dollars admitted by the defendants after discovery by complainant Overton; that in addition thereto said accountants assisted in preparing income tax returns for the receiver and their compensation was fair and reasonable; that all of the information made available by said audit is of great value to all of the stockholders of the Presidio Mining Company

and discloses true facts in the company affairs, which otherwise would not have been made available to said stockholders; that the appointment of said accountants was not resisted by the defendants but was tacitly acquiesced in by them through their counsel; and the appointment was within the sound discretion of the court and approval [335] of payment of said moneys to said accountants by the receiver is likewise within the sound discretion of the Court; that all of said proceedings and orders herein, and said accountants' report, are here referred to and by said reference made a part hereof as fully as though here set out in full, complainants reserving their right to use the same or any portion thereof on appeal, or other proceedings, which may hereinafter be had in this suit.

That by this litigation and receivership, Section 5 has been taken from W. S. Noyes and awarded to the Presidio Mining Company, the assets carefully husbanded, the defendants made more affluent than ever before in their history through their shares of the moneys thus accumulated, and all stockholders greatly benefited through the efforts and energies of the complainants, one of whom Captain W. S. Overton, at all times since on or about October, 1916, has been kept on the Board of Directors by the assistance and votes of the other minority stockholders. That no loss or detriment has been suffered by defendants but only great gain as herein set forth.

WHEREFORE complainants pray that the receiver's report be approved; that the exceptions and

objections of defendants be overruled, and taxation of costs against complainants denied.

WM. F. ROSE,
Solicitor for Complainants. [336]

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

W. S. Overton, being first duly sworn, on oath deposes and says:

That he is one of the complainants in the above-entitled suit; that he has read the foregoing and within answer and knows the contents thereof; that the same is true of his own knowledge except as to those matters which are therein stated on his information or belief and as to said matters he believes it to be true.

W. S. OVERTON.

Subscribed and sworn before me this 30th day of June, 1921.

[Seal] HENRIETTA HARPER,
Notary Public in and for the City and County of
San Francisco, State of California. [337]

Exhibit "A."

PRESIDIO MINING COMPANY,

255 California Street,

San Francisco, Cal., July 29th, 1918,

W. F. Rose, Esq.,

Attorney at Law,

San Francisco, Cal.

Dear Sir:

Mr Handy has suggested that it might be wise

to operate the mine by using more of the low grade ore than we have heretofore been using. This would, of course, be done gradually and carefully, but as it will reduce the net earnings, I would like to have your opinion regarding such a change.

Very truly yours,

W. B. MALING,

Per F. H.

Receiver Presidio Mining Co.

W B M / F M H. [338]

Exhibit "B."

July 31, 1918.

Mr. Walter B. Maling,

Receiver, Presidio Mining Co.,

City.

Dear Sir:

Replying to your favor of the 29th inst., I expect to leave for the mine this afternoon, and will go over the matter of working the low grade ores with Mr. Handy on my arrival at the mine, and on my return will take the matter up with you fully.

Letter will likewise be forwarded this day to Mr. Wehe, with stipulation, relative to investing surplus funds.

Very truly yours,

(Signed) WM. F. ROSE. [339]

Exhibit "C."

August 24, 1918.

Walter B. Maling, Esq.,
Receiver, Presidio Mining Company,
San Francisco, Cal.

Dear Sir:

Capt. Overton has just called my attention to the fact that I had not formally notified you of the position of the Complainants relative to the working of low grade ores in the Presidio Mine at Shafter, and along the lines first indicated to us by Mr. Handy. I was under the impression I did write on my return from Texas, but find this was not done.

The complainants fully endorse the ideas of Mr. Handy and the Receiver in this matter, even though the Company income be considerably reduced thereby. It appears not only a sound business proposition, extending the life of the mine, but will permit possible discovery of considerable high grade ore. We heartily concur in this proposed policy, as heretofore indicated, both on my trip to the mine, and by Capt. Overton and myself verbally since returning.

Very truly yours,

WM. F. ROSE,

Attorney for Complainants. [340]

Exhibit "D."

San Francisco, Sept. 2, 1918.

Mr. Walter B. Maling,

San Francisco, Cal.

My dear Mr. Maling:

All of this year, we have been producing 50.000 or more ounces of silver per month at Shafter and from my intimate knowledge of the mine, I feel that this rate of production is pulling to hard on the mine.

The new equipment which we installed at the mine during 1917, after a couple of years of careful consideration and planning, was for the purpose of enabling us to work lower grade ore. That object was attained upon the completion of the plant and we had, in addition, a piece of unanticipated good fortune in the rise of silver to one dollar per ounce; which made the situation that much better.

It has always been our policy to work ore as low grade as would pay a reasonable profit, for the reason that the extraction of low grade ore was (and is) our best and most effective means of prospecting for further ore bodies. The object of this policy was, as you will readily understand, to conserve the better grade of ores as much as possible and thereby prolong the life of the mine as a going industrial enterprise, and the result of such policy has been that this mine, which is a most erratic series of replacement ore deposits, has con-

tinued in steady operation for thirty-six years; something which is rather unusual.

I strongly suggest to you that the production be reduced to 35,000 or at most 40,000 ounces per month (which will yield all the profits we were looking for in 1917) in order to conserve such good ore as we have and to enable the indirect prospecting done by the removal of ore in the stopes to be carried on by the removal of the proper ores while such poorer ores will pay, owing to the present high price of silver.

It is my opinion that we are drawing an undue proportion of the better ores in order to keep up the present rate of production, and if that course be continued, we will, before long, find ourselves with nothing but the poorer ores ready for mining.

Commanding these facts and suggestions to your consideration, I am,

Yours very truly,
(Signed) WM. S. NOYES. [341]

Exhibit "E."

San Francisco, Sept. 12, 1919.

Mr. Walter B. Maling,
7th and Mission Sts.,
San Francisco, Cal.

My dear Mr. Maling:

As you know, I have carefully abstained from intruding unasked—for suggestions upon you or in any manner interfering with your management of the business you have in hand with regard to the Presidio Mine, but a condition has arisen under

which, in my opinion, it is almost imperative that I should discuss the same with you; nevertheless, I am writing the following with great reluctance.

Under date of Sept. 6th, Mr. E. M. Gleim has written me as follows:

“On Wednesday last they had an accident in the mine which injured three men. Such things cannot be helped and it may be the fault of no one, but it has served to bring out the things which I have long heard from responsible men. They say that there have been several narrow escapes from accidents. This, perhaps, is always the case, but the men insist that the men in immediate charge continue to remove and to reduce the size of pillars until many of the Mexicans say they are afraid to work in the mine and it is reported that quite a few are going to quit on that account. They say that this is particularly true of the 220, where the ground is very heavy and the pillars are extra large. There are many reports that this very important part of the mine, so far as the future is concerned, is practically ruined and is extremely dangerous. As you know, this entire country is covered with a 30-foot talc bed and the high grade ore lies directly under it.”

I have heretofore received information to the same effect from other sources, but have waited and waited for confirmation before opening the subject with you, but the matter involved is of such sup-

reme importance to the stockholders, involving, as it does, the very existence of the mine as a mine, that I have concluded that my duty to the owners of the property will not permit me to keep silence any longer.

First, however, I want to point out several facts in that connection, viz:

1. That the entire tone of Mr. Gleim's letter is not carping; on the contrary, he does not seek to blame anyone for the late accident, but says "such things cannot be helped."
2. Mr. Gleim does not aver as a fact that any pillars have been removed or reduced in size, but says plainly that his information is hearsay and gives its source.
3. The same, or stronger, statements have been made to me by others.
4. The particular region said to be involved, namely, the 220 ft. level, is specified; so the rumor, if it is only a rumor, is not wholly indefinite.
5. In the workings known to us as Avarelia, West or 220 [342] a large cave occurred some years ago, in spite of every precaution, and a very large tonnage of ore is now inaccessible for that reason. The present 220 workings are below that just mentioned, on the dip of the strata.
6. The ground in the two places is very similar; the same stratum of talc occurs in both places and this material is exceedingly flaky and

unstable, frequently comes away from the rock in large slabs and requires more support than other ground in this mine.

7. All of those interested cannot be expected to be familiar with those phenomena; and we are all to some extent in the hands of technical employees; and it may be that those upon whom we now depend (and must depend) in such matters have not had the experience with this particular mine and the special conditions and phenomena involved which is necessary to give an assurance of the soundness of their judgment.

I therefore respectfully ask you to request of Mr. Handy a full report on this subject, stating specifically each and every spot (with reference to the map) where any material whatever has been taken from any pillar, if any such there be. It is not good practice for miners to disturb pillars where the roof is heavy, before they are ready to abandon the ground finally; and the ground certainly is heavy in that part of this mine.

This information will be as desirable for you as for all the stockholders, for the reason that if the information above referred to is founded on fact, both you and the stockholders should know it; but if, on the contrary, that information shall prove to be without foundation, as I hope it may, the stockholders will be relieved of any possible fear of menace to their property, and the last word of encomium of your administration, which has been

in all other respects beyond criticism, will have been spoken.

As an additional suggestion, I will say that if the hoisting ropes at the East shaft have not been renewed since Mr. Handy has been there, they should have immediate attention:—by this time they have been run pretty nearly to the limit of prudence.

Yours very truly,
(Signed) WM. S. NOYES. [343]

Exhibit "F."

Shafter, Presidio Co., Texas,
September 21st, 1919.

Walter B. Maling, Receiver,
San Francisco, California.

Dear Sir:

Your letter of September 15th, enclosing copy of letter from Mr. W. S. Noyes and copy of your answer to him, have been received by me, and in reply would state that the accident which occurred on September 3rd, was in what is called the Open Cut, and has no connection with the 220 workings, where it has been reported that we have taken out pillars, etc.

This accident was unavoidable; it is no more dangerous there than in any other place where we have to get out ore to keep the mill supplied. It is of course much to be regreted but was not due to carelessness on the part of those in charge.

I have never had any person working in the mine come to me and say that he was afraid to work

in the mine, or that those in charge were making it unsafe, and Mr. Thompson and Page tell me the same thing.

No men have been hurt in the 220 workings, and nothing has been done there that has ruined it or has been or will be a menace to the future.

Since December 1st, 1919, one pillar in the 220 stope has been reduced in size and one has been removed. This work was done only after careful consideration, both as regarded the future working of the property in this place, and the safety of the miners themselves. A rough sketch is enclosed, which is drawn to a scale and will enable you to place it on the map.

The first week in December last, Mr. Thompson and Mr. Page on taking over the management of the mine, found no ore broken or none in the chutes, and it was highly desirable for obvious reasons to keep the mill going steadily; after a most careful consideration of the whole matter it was decided to reduce the size of this particular pillar as there was good ore in it and it was convenient to a chute. This is the extreme western edge, and the roof here is hard limestone, with no talc showing, and it is possible in this particular place to observe the character of the ground for considerable distance above, and it is all hard and solid; the ground at this place is much easier to hold than that of the averila. I am satisfied that an examination by anyone who is a miner, will convince them that

this is in excellent shape, and that the future of this particular spot or of the stope in general has not been jeopardized.

In regard to the pillar that was removed, would say that the country immediately surrounding it was in an extremely dangerous condition in December 1918, but the pillar was not removed until early in April of this year. It stood in the main high-way through the 220 stope and it was a small pillar, badly cracked and close by it were two 6x6 stulls 6 ft long, which showed signs of taking considerable weight. An incline raise was driven in back of this pillar up to a hard roof, and then the entire surrounding country was dropped with one round. The loose material was then picked off the back and the roof arched, and today it is 100% safer than it ever was. While it is true that considerable good ore was obtained, the only object in removing this pillar was to make this place safe.

The enclosed sketch will give you a good idea as to what [344] was actually done here, and an examination will show a fine arched roof, solid and firm.

The reducing in size of the pillar referred to above, was no doubt responsible for the report that was circulated early in December, that we were taking out pillars, and making the mine unsafe, etc. But I have heard no rumors or gossip since that time, and as I said before, none of the Mexicans have come to me and complained that they were afraid to work in any part of the mine, or that those

in charge were doing work that made it unsafe. And as these Mexicans appear to me to be timid, fearful and suspicious, I feel quite sure in my own mind that they would not hesitate to lay this matter before me and those directing the work in the mine if there was work being done that would put them in danger, or cave the workings.

I feel that much the best way to dispose of this whole matter, would be to send some good experienced man down here, and let him look over this whole mine carefully, and particularly where we have been working since December 1st. and make a report to you; we will do everything in our power to assist in such an examination.

As regards the matter of a new hoisting rope at the East Shaft, will say that about three months ago I wrote you as to the advisability of putting on new ropes; you wrote me to go ahead, and I ordered same from El Paso Foundry & Machine Co. on August 8th. after getting competitive prices on the rope. This came in on September 6th. and is now in place, and is in good shape.

I sincerely trust that this explanation will serve to reassure yourself and the stockholders of this Company, that we are honestly doing our best to carry all of this work along as it should be done, and that a physical examination will be made, in the near future by some capable person of the mine and the equipment.

Yours truly,
(Signed) F. C. HANDY.

We have read the foregoing and we hereby certify that the facts stated are true and correct.

(Signed) THOS. W. THOMPSON,
E. H. PAGE. [345]

Exhibit "G."

TESTIMONY IN TRIAL COURT.

Direct Examination W. S. NOYES.

Transcript page 407.

Mr. HARDING.—Q. There were statements made in the testimony of Mr. Overton to the effect that there were reports to him of charges of graft, which you were interested in down at Shafter in connection with the dealings of the company down there. Mr. Noyes, have you ever received any payment of commission on any purchases that were made by the Presidio Mining Company?

A. No, sir. ,

Q. Have you ever received any commission of any kind on merchandise down there?

A. Some years ago I had a small interest, but it did not amount to anything.

Q. A small interest in what?

A. In a commission on collections but that was some years ago.

The COURT.—What do you mean by that, Mr. Noyes?

A. We had at one time a system of collecting the bills of Mr. Gleim.

Q. In regard to what?

A. The store bills of Mr. Gleim and he allowed me a small commission. That only obtained for

a short time and I gave it up. It did not amount to anything.

The COURT.—Cannot you give some definite statement as to what period that extended over, and what you got from it?

A. It was a good many years ago and I really do not remember it.

Q. Have you a memorandum of it?

A. No, I have not.

Q. Is that while you were an officer of the company?

A. That was when I was superintendent back in the nineties.

* * * * * * * *

Page 408.

The COURT.—Let Mr. Noyes explain it—do not suggest to him. Let him explain it. I want his explanation, not yours.

Mr. HARDING.—Explain the whole situation, just what you did.

A. Well, the miners bought of them, and I collected the [346] bills for Gleim, and he allowed

2.

me, as I say, a small commission. But at the same time he sold us, and is still selling all the supplies to the company at cost to him. I gave that up a long time ago. I told him it was not a good arrangement.

* * * * * * * *

Page 409.

Mr. HARDING.—Q. How long ago did that con-

dition prevail there that you speak of, when you made collections for Gleim?

A. It is a good many years since we abandoned that. It was along about perhaps 8 or 10 years ago.

* * * * *

Page 463, 464.

Cross-examination W. S. NOYES.

Mr. ROSE.—Q. Yesterday Mr Noyes, you testified that you received some years ago a certain proportion of collections which you had been making in the way of a commission in Shafter?

A. Yes.

Q. That took place some time in the nineties as I recollect your testimony?

A. Yes, in the nineties.

The COURT.—I think the witness said that it ceased in the nineties. He did not state any definite period during which it existed.

The WITNESS.—I believe I said in the nineties, but it was in the nineties or the early part of the nineteen hundreds. It is so long ago I am unable to remember the exact dates.

Mr. ROSE.—Q. I will read now from your answer which you swore to on the 11th day of October, 1915, which is on file in this action, page 31, line 26:

“Admit that from time to time in past years he held small interests in small mercantile enterprises at Shafter, Texas, and that he disposed of all such interests about three years ago.”

A. I disposed of the last interest I had in any outside business, but these commissions were disposed of long prior to that. [347]

3.

I stepped out and left them alone.

* * * * * * * *

Page 465.

Mr. ROSE.—Q. Did you have any interest, or receive any revenue from the E. G. Gleim Company's store?

A. I testified yesterday that for a while Mr. Gleim paid me a small commission for collecting the bills for him. That was the one that was abandoned quite a good many years ago.

* * * * * * * *

BEFORE THE STANDING MASTER IN CHANCERY.

Testimony of W. S. NOYES on Direct Examination.

Page 163.

Mr. ROSE.—Q. I will ask you Mr. Noyes, how much money the E. G. Gleim Company paid to you monthly commencing with September, 1908 up to the present time? A. Mr. Gleim paid me—

Mr. DUNNE.—No, you were not asked that question. Just listen to the question. Will you read the question, Mr. Reporter?

(Question read by the reporter.)

A. My records are very incomplete but from

memory I should say for about four years at \$1200 a year.

* * * * *

Page 164.

The MASTER.—Q. That covers the period from September, 1908?

A. Until the early summer or late spring of 1913. I should say it would be about four and a half years.

* * * * *

Page 171.

Mr. ROSE.—Q. How did it happen to cease, Mr. Noyes?

A. In the early part of 1913 I wrote Mr. Gleim to discontinue any payments to me for the reason that I could not see that I could be of any service to him further. The payment ceased after that letter. [348]

4.

Page 185.

Mr. ROSE.—Q. (After reading from testimony given in trial court.) Does this refresh your memory Mr. Noyes as to the time within when you received this money and the date of the cessation of these payments?

A. I think there was an error in reporting it. I meant to convey to the Court that it began in the nineties. I did not intend to state that it ended in the nineties at all, because it did not. It refreshes my memory to that extent.

The MASTER.—Q. I am not quite sure that you are saying what you intend to now, Mr. Noyes.

With respect to this matter of \$100 a month, you said that it amounted to about \$5,000, as I recall?

A. From September 14th, 1908, until it ended.

Q. Oh, I see. From that date it was about \$5,000; Is that right? A. Yes, sir.

Q. As I understand you now, that same arrangement had been followed prior to 1908. A. Oh, yes.

Q. From some time in the early nineties?

A. Yes, I never have intended to imply differently. I think there were some errors in reporting the main case.

Page 186.

Mr. ROSE—(Reading from testimony given in trial court.)

“Mr. HARDING.—Q. How long ago did that condition prevail there that you speak of, when you made collections for Gleim? A. It is a good many years since we have abandoned that. It was along about perhaps eight or ten years ago.”

Q. Do you recall that testimony, Mr. Noyes?
A. Yes.

Q. Does that help to refresh your memory any?
A. Yes, that was a mistake.

Q. Have you any record or memorandum, Mr. Noyes, showing these payments to you from Mr. Gleim? A. No, I have not.

Q. None whatever? A. No.

* * * * *

5.

Page 192.

The MASTER.—Q. When you speak of this sum from the Gleim store as \$100 a month, was that an agreed sum per month?

A. Between Mr. Gleim and myself?

Q. Yes. A. Yes, sir, it was.

Q. And when you were referring, as I take it, to the same subject matter in the testimony which Mr. Rose read as given in the main case, you referred to a commission, did you refer to that \$100 a month?

A. The latter part of it, yes; in the early part of it, back in the nineties, he paid me a percentage, four or five per cent, I think it was.

Q. That subsequently became \$100 a month?

A. Yes, sir.

* * * * *

TESTIMONY BEFORE THE MASTER.

Deposition of E. G. GLEIM, June 13, 1918.

Page 12—Deposition—Direct Examination.

Mr. MEAD.—Q. What years was it that E. G. Gleim Company paid Wm. S. Noyes stipulated amounts for services in collecting these accounts?

A. Well, I wouldn't answer that question because E. G. Gleim Co. didn't pay Mr. Noyes; they gave it to him.

Q. What years did they give him a stipulated amount?

A. I will answer that—from 1908 until July 1915.

Q. How much did E. G. Gleim Co. give Mr. Noyes?

A. They gave him a hundred dollars a month.

Q. Is that all they gave him?

A. Yes.

Q. What was that given for?

A. Well, that would take a long explanation. It was merely a matter of gift. [350]

6.

Page 31—Deposition, Redirect Examination.

Mr. MEAD.—Q. What did you pay that \$100 a month to William S. Noyes for?

A. I gave it to him voluntarily; it was no payment at all.

Q. Why did you do that? A. Out of friendship.

Q. What had he done for you?

A. He had done a great deal for me in a friendly way. We were great friends. As I told you, he gave me that business. He asked me to take it and it turned out very successful and I was very grateful for it, and when he needed it, I helped him out and I would do so again. [351]

Exhibit "H."

TESTIMONY IN TRIAL COURT.

Cross-examination W. S. NOYES.

Page 464.

Mr. ROSE.—Q. I will read now from your answer which you swore to on the 11th day of October, 1915, which is on file in this action, page 31, line 26:

“Admit that from time to time in past years he held small interests in various mercantile

enterprises at Shafter, Texas, and that he disposed of all such interests about three years ago."

A. I disposed of the last interest I had in any outside business, but those commissions were disposed of long prior to that. I stepped out and left them alone.

The COURT.—Q. What mercantile concerns did you hold an interest in, Mr. Noyes. A. I had, as I said, this commission on collections I made, and then for a while I helped finance Mr. Bowers' business. I drew out of that some time ago.

The COURT.—Q. Cannot you give some definite date?

A. It is so long ago I am uncertain of the date.

Q. You have some idea how long that situation existed?

A. Oh, that existed—

The COURT—I regard it as material, or I would not be asking you. I would like some definite knowledge on the subject.

Transcript p. 465.

A. That situation existed perhaps for ten or fifteen years, in my earlier days.

Q. From about what date to what date?

A. From in the nineties, late nineties until 1911 or 1912.

Q. What other mercantile establishments did you have any interest in? A. Nothing else.

Q. Just the Bowers' Mercantile establishment, you say?

A. Yes. [352]

Redirect Examination.

Page 487.

MR. HARDING.—Q. You have stated you had some interest in Mr. Bowers' business. A. Yes.

Q. What was that business? A. I helped finance the starting of the business, and he paid me a portion of the profits of the business.

Q. You furnished him with some capital. What was the nature of the business? A. Hauling freight, and for the last few years he has sold us, oh, thirty-five or forty cords of wood a month.

Q. Did he do a general hauling business down there or did he haul exclusively for the mine?

A. He hauled freight for other parties, I believe. Mr. Bowers attended to that. I did not know much about the details.

* * * * *

Page 488.

Q. Can you give us any more definite idea of your relations with Mr. Bowers in that business? A. My memory is rather hazy on that.

Q. Have you been interested with him in the last five years?

A. Yes. Perhaps I withdrew from him within the last couple of years.

Q. Do you think you can look up and ascertain from any data you may have any further particulars of that business?

A. I could, at my office, look up the last division we had.

The COURT.—You must have had some corres-

pondence with him when you drew out, or closed out with him. A. I just quit.

Q. Did he buy you out or how? A. No, I just dropped out. The portion of the money I put up year ago was not great. I have forgotten just how much it was. We divided that, and within the

3.

[353] last couple of years I drew out. I thought those things were embarrassing.

The COURT.—Into a business that one has put some capital, you would do more than simply drop out, unless the business had gone to pot. A. The business has been reduced.

Q. Is not Mr. Bowers engaged in it yet? A. Yes.

Q. Actively? A. He is carrying it on by his man at Shafter.

Q. Did you have a half interest in that business?

Transcript, p. 489.

A. I was to have a half interest in the profit.

Q. Surely one who has a half interest in the profits of a business must have put up one-half of the capital.

A. I did not put up half of the capital.

Q. How did you get half interest in the profits, simply because of your relations with the mine? How did you get a half interest in the profits? What was the consideration for giving you a half interest in the profits if you did not put in half of the capital?

A. Well, there was no specified consideration other than Mr. Bowers' friendship for me.

Q. Did it not grow out from the fact that you occupied the position you did with this company, which enabled you to see that the freight was furnished for the corporation, for that company?

A. No, I didn't look at it exactly that way. It grew out of the fact that I saw the necessity of reliable transportation.

Q. But a man usually does not carry friendship into a business to the extent of paying money for it. Now, unless you put in one-half of the capital, I do not understand upon what principle you would be entitled or would be accorded, one-half of the profits. [354]

4.

A. Well, at that time —

Q. You can readily understand, Mr. Noyes, that these inquiries are not idle? A. Yes.

Q. Because of the circumstances involved in this case, I should like to have you fully, frankly, and clearly, state the nature of that transaction.

Mr. HARDING.—Q. How long ago was it that you had an interest in that hauling business?

A. With Bowers?

Tr., page 490.

Q. Yes.

A. Oh, that began some time in the nineties.

Q. Will you look in your office and see if you have any data in regard to that matter?

A. Yes, I will look over what data I have.

* * * * *

The COURT.—Mr. Noyes, have you any statements that were furnished to you by Mr. Bowers

during those years, and while you have had your office here in San Francisco, as to the state of your account with him?

A. Mr. Bowers never made me any further statement than to send me sums of money

Tr., page 290½.

from time to time, stating that was my share of the profits of the business. The details of it were left entirely to him, and if there were any statements sent, they were sent by his representative, and I never looked into the details of them at all.

Mr. HARDING.—Q. Do you know whether or not Mr. Bowers keeps books of that business?

A. I am not certain. I believe he does. That business was so small, that I simply left the whole thing to Mr. Bowers, and never gave it any attention.

The COURT.—Q. What was it, in its general nature, outside of [355] freighting?

A. Freighting was the main business, together
5.

with the small amount of wood that was used at the mine for a number of years past.

Q. Freighting and dealing in wood, dealing in hay, or anything of that kind?

A. I was about to add that Mr. Bowers informed me that he supplied his own teams, wagons, hay, and feed, and made a profit on that.

Q. It was not a general merchandising business in any way? A. No, sir, it was not.

* * * * *

BEFORE THE STANDING MASTER IN
CHANCERY.

Testimony of W. S. NOYES on Direct Examination.

Page 198.

Mr. ROSE.—Q. How much money per year would you say you obtained from Benton Bowers between the period commencing September 1908 and February 1918, a period of approximately ten years, or nine years and a few months?

A. I have a memorandum here covering part of that time, and I will refer to it to get the dates: from September, 1908, to the time I abandoned the business I have a record of \$1695.

Mr. DUNNE.—Q. When did you abandon the business?

A. Three or four years ago, I have not the date of that.

Mr. ROSE.—Q. What does your record show, Mr. Noyes?

Mr. DUNNE.—He said \$1695 approximately, from September 1908 until he abandoned the business.

Page 199.

A. I drew out of the business in 1913 or 1914, according to my present recollection, either 1913 or 1914.

Mr. ROSE.—Q. You cannot state the exact date?

A. No, I cannot.

* * * * *

6.

Page 202.

The MASTER.—Q. Referring to this \$1695, Mr. Noyes, was this a profit from a business in which you had capital?

A. I put capital into it in the first place with Bowers. We got the capital out in perhaps four or five years.

Q. Long preceding 1908.

A. Away long preceding 1900.

* * * * *

Page 204.

* * * The upshot of that conversation was that I put in about \$4,000 with him to help him carry the wood. Wood that was cut and stacked up to dry would require seven or eight or nine months before it was delivered to the company and he could get the money. Before I got through, as I say, I had \$4,000 or a little over that in the business with him.

* * * * *

Page 205.

The MASTER.—Q. During this time you were an officer of the Presidio Mining Company?

A. I was superintendent.

Q. Were your relations with the company and Bowers disclosed to the company at any time?

A. Yes, I talked to some of the people about it.

Mr. ROSE.—Q. Who did you talk to about it, Mr. Noyes?

A. I think I talked to the secretary about it, the old secretary, in years gone by.

Q. To Mr. Osborn? A. Yes.

Q. Anybody else?

A. I could not say positively yes or no to that.

Q. As a matter of fact Mr. Noyes, the directors of the company and the stockholders generally knew nothing at all about your transactions with those outside parties, isn't that a fact? [357]

7.

A. I don't know why it should be; there was no effort made at concealment.

Q. But you never took any pains at any time to let anybody know of your doings or dealings with those third parties. You never reported it to anyone or on any record of the company, did you?

A. There was no occasion to report it, to the stockholders' meetings. The stockholders are concerned in the mining operations of the company.

Q. I say, as a matter of fact, there was no report to the directors so that they knew anything about your dealings with third parties?

A. No, I don't suppose there was.

Q. And so far as you can recall, Mr. Osborn is the only man you talked to, and he was the secretary of the company?

A. He is the only one I can be positive about now.

* * * * *

Page 209.

Mr. ROSE.—Q. It is a fact, is it not Mr. Noyes, that you have had at all times in the last twenty-five years the actual control over the giving of contracts between the Presidio Mining Company and third parties at the town of Shafter, or connected

with supplying materials or goods to the company, or hauling supplies to the company?

* * * * *

A. I bought the goods for the company, of course.

Mr. ROSE.—Q. That does not answer the question.

A. I answered that I bought all the goods for the company and I took the choice as to where to buy them.

The MASTER.—Q. Then your answer to the question is yes, isn't it? A. Yes.

* * * * *

[358]

8.

TESTIMONY IN TRIAL COURT.

Direct Examination of BENTON BOWERS.

Page 492.

Mr. HARDING.—Q. You just heard the testimony of Mr. W. S. Noyes, that he has some interest with you in that business?

A. Well, he had an interest in the profits. He helped finance it.

* * * * *

Page 493.

Q. Can you recollect how much money approximately, Mr. Noyes—to what extent did he assist you?

A. I remember at one time, I had over \$8,000 on the books, that I had advanced, and Mr. Noyes was responsible for about one-half of that, as I needed money. If I was short, he helped me. The under-

standing was if I fell down or anything happened, why he was to stand half the loss.

* * * * *

Q. Can you recollect how long ago Mr. Noyes ceased to be interested with you in that business?

A. I was looking into my memorandum book. It has been a couple of years or so ago. The business got down to such a small matter, that the profits did not amount to anything.

Page 497.

Q. Did you keep any books in regard to Mr. Noyes' interest in the business?

A. No; every month when I settled up with my man, whatever there was I just turned it over, with the exception of the balance I kept to carry on the business with. It was settled monthly or every two or three months, if there could be anything taken out of the business. Whatever profits there were would be just sent to Mr. Noyes. I would just send him a check for them.

Page 498.

Q. Have you got any books showing these transactions?

A. No, I have not. We quit the business—that is, my man is running the business down there now' and once in a while [359] he sends me a small

9.

check, maybe once or twice a year. When he gets \$250 or something like that, when he sells quite a lot of stuff, maybe in three or four months I will get a \$500 check. It depends on the amount of stuff that he sells. Whatever the profit is, I di-

vided it up with Mr. Noyes, but that stopped some time ago.

* * * * *

Page 602.

A. I remember that I had on the books about \$8000 at one time advanced in that wood business on the river.

The COURT.—Q. Advanced by you?

A. Mr. Noyes and I. He told me just to draw on him for half of his part of the money.

* * * * *

The COURT.—Q. What was the result of the matter?

A. We made no profit the first year. We did not make any profit until we commenced to deliver this wood and began to get back the money that we had advanced on these teams, and the wood that we had cut and hauled out there to dry.

* * * * *

Page 603.

Q. How many years did it take before you got your money back?

A. Four or five years, probably a little longer, before we got all our capital back.

Q. After that, what did you make out of it?

A. After that?

Q. Yes, sir.

A. That varied according to the prices we had to pay for the stuff. We got about \$100 a month out of it for two or three years.

Q. Both you and Mr. Noyes together?

A. Yes, sometimes it would run a little more and sometimes a little less.

The COURT.—Q. \$100 gross or \$100 for each of you? A. \$100 for each of us. [360]

10.

BEFORE THE STANDING MASTER IN
CHANCERY.

Testimony of BENTON BOWERS on Direct Examination.

Page 629.

Mr. ROSE.—Q. Now Mr. Bowers, can you state how much per month you paid to Wm. S. Noyes, commencing in the month of September 1908, up to the time when any payment ceased from you to Mr. Noyes?

A. No, not any month, because I never got anything out of the business monthly; whenever there was a surplus of more than what was needed to carry on the business, my representative would send me a check for it, and I would send Mr. Noyes a check for his part of it.

Q. Can you give me any idea at all, Mr. Bowers, as to the amount of money that you paid, commencing with 1908, in September of that year?

A. It would not exceed \$500, I don't think, a year.

Q. Do you know whether or not you sent Mr. Noyes, for instance in the year 1912, approximately \$500?

A. Well, I think it ran about that. I never kept any account of it because whenever I made the settlement, it was a closed incident.

Q. Do you recall whether it was \$600 in 1913?

A. No, I don't. I generally got the checks in about \$500 and sometimes there was one or two years that the year would run over before I would draw anything out of the business; sometimes we had to advance considerable; whenever it was not necessary to keep the money there, my representative would send me a check for it. He has sent me a check when it would run over a year for as high as \$1000; that was the most that was ever sent, and it would perhaps be from the year back. I never gave him a check for over \$500.

* * * * *

[361]

11.

Page 630.

Q. Do you know when you last sent Mr. Noyes any money under these arrangements?

A. I don't think there was ever anything—in fact, I think it was 1914, as I remember it, in the early part of the year, that he dropped out of the business; it got so small that there was very little to be made; the profits ran down until there was very little to be made.

Page 642.

On Redirect Examination.

Mr. ROSE.—Q. Did Mr. Noyes ever put up any actual money with you at all?

A. Yes, he left money in the office for me to check against.

Q. Do you know how much money he put up?

A. I have not that in mind.

Q. Can't you approximately?

A. The money that I advanced he put up half of it.

Q. How much did you advance?

A. I advanced at one time, over \$16,000 on the books.

Q. Do you know whether that was Mr. Noyes' own money or the money of the Presidio Mining Company?

A. I have no knowledge of that. I know that part of it wasn't—I can say that.

* * * * *

Page 643.

The MASTER.—Q. You say that you know some of the money was Noyes' money. In other words, that it was earmarked; how much was it?

A. We made arrangements to get the money advanced.

Q. From a bank? A. No, from a merchant.

Q. You borrowed some money?

A. Yes. The \$16,000 was all contracted with one firm, or practically all of it.

Mr. ROSE.—Q. Where did you borrow the money?

A. From E. G. Gleim Company.

Q. In other words, Mr. E. G. Gleim advanced to you and to Mr. Noyes [362] \$16,000 for financing

12.

this so-called wood business, is that the way the matter took place?

A. I made arrangements with Mr. Gleim whereby I could get the advances, and I got the money from

him; in buying material, I bought it through him.

Q. And as a matter of fact, Mr. Noyes did not put up any money at all of his own at any time, did he? A. Yes, he did.

Q. He went good for that \$16,000 with you, is that the way it was done?

A. Before that he put money in the office where I could check against it.

Q. How much did he put in the office that you could check against?

A. I remember that there was \$800 at one time.

Q. Do you know if that money was Mr. Noyes' money or whether that money was the money of the Presidio Mining Company?

A. No, all I know is that he put the money there for me. The money was there in Mr. Noyes' envelope, and he told the clerk to take the money out of his envelope and let me have what I wanted.

Q. And there was as much as \$800 at one time that you know of that was earmarked in that way?

A. Well, I got that amount of money.

Q. From one of these so-called envelopes, you say, \$800? A. Yes, about that.

Q. And the large amount of money then, the \$16,000, came from Mr. E. G. Gleim and was secured by a promissory note, was it? A. No, sir.

Q. Just advanced on your say-so?

A. Yes, it was just advanced on my say-so.

Q. In other words, yourself and Mr. Noyes got Mr. Gleim to advance you \$16,000 altogether to

carry on this wood enterprise?

A. Yes, sir.

* * * * * * * *

[363]

13.

Pages 646, 647.

Q. Did Mr. Noyes ever directly or indirectly appear in any of your transactions with third parties arising out of these contractual relations and the sales? A. No, sir.

Q. Did anyone down there know that Mr. Noyes was interested with you in this proposition—anyone outside of yourself?

A. If they did I do not know it.

The MASTER.—Q. Did Mr. Gleim?

A. I don't think he did.

Q. Did Mr. Noyes guarantee this account of \$16,000 as well as you?

A. No, sir, Mr. Gleim was in a position to see exactly what I was doing. I counselled with him considerable with regard to the matter, as he had been in business there a long time. [364]

Exhibit "I."

TESTIMONY IN TRIAL COURT.

Cross-examination W. S. NOYES.

Page 465.

Mr. ROSE.—Q. Did you receive any revenue at all from Mr. Mann, or from anyone connected with the mine boarding-house?

A. Also in the nineties I had a little interest with

Mr. Mann in the mine boarding-house. It did not amount to anything.

Page 466.

I dropped that.

The COURT.—Q. Tell me more particularly about that. Your suggestion that it did not amount to anything and you dropped it does not mean anything to me. I would like to secure a more definite statement.

A. It made no money.

Q. What was the arrangement?

A. Mr. Mann was the foreman of the mine. It was always one of the most difficult things to carry on a mine boarding-house and get anyone to run such a boarding-house. I put up a little money with Mr. Mann—he put up some more, and he ran the boarding-house. He used to make from 20 to 30 or 40 dollars a month from that. It got down so it paid nothing though, a number of years before Mann quit, and we just called it off.

Q. How long did that subsist there?

A. Oh, perhaps 7 or 8 years.

Q. During what period?

A. About 1895 it began, something like that.

Redirect Examination W. S. NOYES.

Page 485.

Mr. HARDING.—Q. Will you go into detail and explain the circumstances under which you became interested in the boarding-house down there? Just explain the general conditions that existed there in those days, at the mine? [365]

2.

The COURT.—Q. Haven't you any data of those matters by which you can give us some idea, some more definite idea, as to when these relationships existed between you and these different enterprises down there?

A. Nothing but my memory.

Mr. HARDING.—Q. How much had you invested in the boarding-house down there?

A. Oh, two or three hundred dollars. That was some time between 1893 and 1895 that Mr. Mann and I made that arrangement. We each put up that amount of money to buy the equipment, such as dishes and things that were required to carry that on, and we made thirty or forty dollars a month apiece out of it for a little while, for a few years. After that the number of white men who boarded at the house kept getting smaller and smaller, and finally it got down so there was no profit in the outfit, and I told Jim to go ahead and I would step out.

Page 486.

Q. He ran it after that alone?

A. He ran it after that, yes. Since Mr. Mann has given it up.

* * * * *

BEFORE THE STANDING MASTER IN CHANCERY.

Direct Examination W. S. NOYES.

Page 220.

Mr. ROSE.—Q. Did Mr. Mann conduct the mine boarding-house between September 1908, and there-

after, up to the time of the entry of the decrees herein? A. No.

Q. How long did he conduct it?

A. He conducted it until September, 1910. He left Shafter in September, 1910.

Q. Was the mine boarding-house continued after Mr. Mann moved away? [366]

3.

Page 221.

Q. Did you receive any moneys from Mr. Mann from the mine boarding-house during 1908 and 1910? A. I did.

* * * * *

Page 222.

Q. How much a month?

A. About \$10 a month, until the summer of 1910, a short time before Mr. Mann left there, when I told him that the earnings were so small it was not worth dividing, and to go ahead and make what he could out of it.

Q. This building or structure in which the boarding-house was conducted by Mr. Mann belonged to the Presidio Mining Co., did it not? A. It did.

Q. And Mr. Mann at that time was also an employee of the Presidio Mining Co.?

A. He was the foreman of the mine.

* * * * *

Pages 224, 225.

Q. And during this period you were superintendent of the mine, Mr. Noyes, and had full charge of all its operations? A. I was.

Q. And did any stockholder or director know of this relationship?

A. I could not say positively as to that.

Q. Do you recall ever talking with anybody about it connected with the company up here?

A. I don't recall talking about that specifically.

* * * * * * * *

[367]

4.

Cross-examination W. S. NOYES.

Page 242.

Mr. ROSE.—Q. But Mr. Mann was under your control and you could discharge him at any time you saw fit and as a matter of fact, you did do so ultimately; isn't that a fact?

A. That is a fact, yes.

Mr. HARDING.—Q. Mr. Mann continued in the employ of the company after you severed your connection with the boarding-house, didn't he?

A. For a short time; I cannot tell exactly for how long, but for a month or two. [368]

Exhibit "J."

PRESIDIO MINING COMPANY,

255 California St.

San Francisco, California, Feb. 15, 1919.

Mr W. F. Rose, Attorney for Complainants in the
action of Overton et al. vs. Presidio Mining
Co. et al.

Dear Sir:

Replying to your letter of January 9th, 1919,
requesting a full and complete report covering all of

the ramifications of the latest trouble at the Mine occurring immediately preceding, at, and during the period following the resignation of E. M. Gleim, Superintendent, I beg to report as follows:

Immediately upon receipt of your letter, I requested Mr. Wehe, as my attorney, to attend to the matter. He thereupon wrote to Mr. Handy, requesting a compliance with your letter, and also requesting that he give nothing but facts and circumstances within his knowledge.

In response to that letter, Mr. Handy has written me a letter as follows:

“Shafter, Presidio Co., Texas.

January 28, 1919.

Walter B. Maling, Receiver,
San Francisco, California.

Dear Sir:

In obedience to your instructions to me to furnish you with a statement of the facts concerning the affairs of the mine immediately preceding, at, or during the period covering the resignation of Mr. E. M. Gleim, I respectfully submit the following:—

Mr. E. M. Gleim tendered his resignation to me as Superintendent on November 7th, 1918. The next day, in the forenoon, Mr. James Sloan, the Mine Foreman, called me up on the telephone and informed me that he was going to quit at the same time that Mr. Gleim did I told him at that time that there was no reason for him to resign, and that I would like him to continue on during the time that I would be here. He said that [369]

W. F. R. (2)

Feb. 15, 1919.

Mr. Gleim had been a good friend of his, and that he would not stay after he went out. I gave him a chance to reconsider that evening, through Mr. Russell, but he reiterated his intention of going out with Mr. Gleim.

Some days after this M. W. Kehoe, employed as Melter, notified the Mill Foreman that he was going to quit. In talking this over with Mr. Kehoe, he told me that Mr. Gleim was an old friend of his; that he did not think that he had been treated right; and that further, he had heard that he was going to be discharged at the same time that Mr. Gleim went out. I assured him that there was no foundation for any such rumor, and that I was satisfied with his work, and that he could reconsider his resignation and remain. He later informed me that he would go, and he is now, I understand, working for Mr. Gleim at his Quicksilver mine at Terlingua, Texas.

On December 1st, P. F. Wagner, Tramway Foreman, notified me that he was going to quit, and would not stay longer than December 5th. I asked him his reason, and he too, said that he was an old friend of Mr. Gleim's; that he did not think that he had been treated rightly; further, that he had been told that when I first came down to Shafter I had said that I did not think that the work he did was worth the money that the Company paid. I reminded him of the fact that his wages had not been reduced, but on the other hand that they had been increased, and I assured him that there was no reason for his quit-

ting as far as I was concerned, and I told him that I would like to have him remain. He had previous to this told me, and others, that he had no intention of quitting.

On December 5th, 1918, Fred Smith, Engineer at the Mine Power House, quit after giving the Mine Foreman three hours' notice, and gave no reason for this action. He had been in the employ of the Company for a number of years. I had never come in contact with this man in any way, as far as his work was concerned, and considered him a reliable man, and satisfactory.

About December 12th, Henry Brooks, Master Mechanic, and another employee who had been in the employ of the Company for a long time, resigned, to take effect December 20th. This man had assured me on two occasions previous to this that he intended to remain; that Mr. Gleim was an old friend of his, but that for several reasons he could not afford to quit. I assured him that I was perfectly satisfied with him in every way, and that there was no reason why he should quit. I was much surprised when he announced his intention of leaving, and about the only reason that he could give me was on account of Mr. Thompson being appointed mine foreman in place of Mr. Sloan.

In this connection, I would state that after Mr. Sloan notified me of his intention of quitting I spoke to practically all of the Americans and told them that there were to be no changes of any kind, and that as long as a man did his work fairly that he had nothing to fear, and I instructed the Mill Foreman to so in-

form every one. I asked Mr. Russell, Mr. Navarro and others that had influence with the Mexicans to assure them that there were to be no changes. [370]
W. F. R. (3) Feb. 15, 1919.

During the first ten days of December, the Mexicans were uneasy and disturbed on account of the talk that was going around. I was told by different parties that it was being told by employees who had quit that the mill would have to be shut down, that we could not get out the ore. Another story that came to me was to the effect that the Receiver was going to pull down the pillars in the mine, cave it in so that it would have to be shut down, and Mexicans be out of work.

Mr. H. B. Young, who was at that time County Judge, came to me on Dec. 8th and said that he was very sorry to see efforts that were being made to get men to quit, and to embarrass me, and that he considered the condition serious; that it was to the best interests of the people of Shafter that the mine and the mill operate continuously, and that a shut-down would be very serious. He voluntarily offered the services of himself and his sons to help us in every way that they could, on account of our being short-handed. I took it that Mr. Young should be pretty well informed, as he comes in contact with the Mexicans, and knows them all, and appears to have their confidence.

* In answer to your question as to the whereabouts of the men who resigned, would say that Mr. Gleim and Mr. Sloan are here in Shafter and are operating a mine near Section 5 of the Presidio Mining Com-

pany. Mr. Wagner is here in Shafter and is back and forth to a ranch on the river that he and Mr. Gleim are jointly interested in. Mr. Smith has left Shafter, and I have no information as to his whereabouts. Mr. Kehoe, as previously stated, is at Mr. Gleim's Quicksilver mine at Terlingua, his family being here in Shafter. Mr. Brooks is at El Paso, but I am informed that he intends to return to Shafter in March.

It is common talk here in Shafter that these parties have stated that they expect to be back in their respective positions in February, 1919.

The following is a statement rendered to me by Mr. T. W. Thompson, Mine Foreman, who succeeded Mr. Sloan as such on December 1st, 1918:

“When I took charge of the Mine I had two serious difficulties to contend with: first was the condition of the mine, and second was the working attitude of the Mexicans. On account of the erratic occurrence of the ore and the number of working places, a large amount of ore (practically a month's supply) must be kept on hand broken in the mine. The mine is especially well equipped for this purpose. On December 1st, the two chutes from the 400 ft. level to the 500 ft. level were practically empty, as well as the main chutes from the 300 ft. level to the 400 ft. level; also the chutes from the stopes to the 300 ft. level were empty and there was very little ore broken in the mine. Heretofore, all of these chutes were kept full. Dumping a car of ore down these chutes, when they were empty

naturally broke the timber at the bottom, which had to be repaired.

The working attitude of the Mexicans was undoubtedly the result of malicious propaganda. They were assured that Mr. Sloan would return in February and that there was [371]

W. F. R. (4) Feb. 15, 1919.

no necessity of working hard as I could not operate the mine under any circumstances. As late as Dec. 12th, Mr. Sloan went to the home of a Mexican in the employ of the Company and told him, the Mexican, that he would return in February. He also told the Mexican that a number of men were intending to leave the employ of the Company on December 15th, and asked him what he was going to do. The Mexican replied that he intended to work as long as the Company would give him a job. At this time there was a persistent rumor that the mine would shut down on December 15th, due to the lack of ore. A Mexican shift-boss, a brother-in-law of Mr. Sloan, on leaving the employ of the company on Dec. 5th, informed others that he intended to return with Mr. Sloan in February. Luis Pacheco, another brother-in-law of Mr. Sloan, had repeatedly remarked that Mr. Sloan would return in February and dismiss men that are now in the employ of the Company. This individual, I think, is responsible for the rumor that I was incapable of operating the Mine and was only taking old pillars left by Mr. Sloan.

Mr. Sloan, himself, during the first part of December, has asked men to leave the employ of the Company, and a Mexican, Alejandro Munoz by name, who is employed by Mr. Sloan, was in the first part of December seen at the mine office, and has asked men to leave the employ of the Company.

All of these stories kept the Mexicans in a state of unrest and wondering whether or not the Company would operate. As soon as the trouble makers were weeded out and the Mexicans saw that the Company intended to operate, they accepted the changes and are at present apparently well satisfied.

All of the time that I was employed by the Company and Mr. Gleim was superintendent, he was always friendly and cordial toward me. When he was notified that I was to take charge of the mine, I immediately noticed a change in his attitude. On November 26th, on a stormy day, we went to the mine together, and were met by Mr. Sloan with the greeting that I must want his job pretty bad to come out on a day like this. We proceeded to the mine office, and the first words spoken in regard to the work were from Mr. Gleim who said 'Well, Thompson, what do you want to do?' I replied that I did not want to do anything, but thought that if Mr. Sloan was going through the Mine I would go with him. I told Mr. Gleim that I noticed a change in his attitude toward me and that I could see no reason why there should be. He replied that he knew he had no reason to be sore at me as long as some one had to fill the Mine Fore-

man's position, but he was sore at the treatment he had received, and it made him sore to think that a friend of his (meaning me) would take the place of another friend. I attempted to show him the absurdity of such logic, but of no avail, and we three proceeded through the mine. I asked Mr. Sloan two questions which he answered and that was the limit of the conversation as far as the work was concerned. After my trip through the mine with Mr. Sloan and Mr. Gleim, I felt as well compensated as a blind man leaving a movie.'

Mr. Thompson experienced a great deal of trouble during the first ten days in getting out enough ore to keep the mill running, owing to the difficulties that he speaks of, [372] but after the receipt and

W. F. R. (5)

February 15, 1919.

posting of your telegram of the 13th of December, the attitude of the Mexicans changed, and more men applied for work.

Mr. Gleim had told me that with Sloan, Brooks and Wagner on the job nothing could stop the running of the plant. When these three men and other quit, without practically any notice, it made me apprehensive. Mr. Sloan had remarked to me more than once that in thirty days he could close the whole works down, for want of ore of proper grade; when Mr. Thompson reported the condition of the mine and the attitude of the Mexicans, I became more apprehensive. I did not want to have to shut the mill down for lack of ore, as it meant a loss to the Company, and it meant a disorganization of the Mexicans.

Your telegram of December 13th, signed by yourself, Mr. W. S. Noyes and Mr. B. S. Noyes had the effect of reassuring the Mexicans, and we could feel for the first time since December 1st that the Mexicans were going to settle down and that things had a chance to return to normal conditions.

In reply to your question as to whether Mr. Gleim, Mr. Sloan, or any of the parties leaving the Company employ, occupy its, or go on its property, would say that to my knowledge and information, they do not. I have never noticed them at the mill or mine, and know that they do not occupy any of the Company's quarters.

Yours truly,

F. C. HANDY."

As to my telegram of December 13th, to which reference is made in the report, the following is a copy of the same:

"San Francisco, Cal., Dec. 13, 1919.

Fred C. Handy,

c/o Presidio Mining Co.,

Marfa, Texas.

You may assure all employees of the Presidio Mining Company and of the Receiver that it is the desire of the Company that the mine should be carried on as heretofore. Assure all employees that no employee will lose his position hereafter because he retains his position under the Receiver. If reports to contrary are being circulated by former employees, they do not have the endorsement of the Company. Give a copy of this telegram to Frank

Russell, also the Priest and E. G. Gleim Company and any other person interested and request their assistance.

(Signed) WALTER B. MALING,
Receiver.

PRESIDIO MINING COMPANY,
By B. S. NOYES,
President.

WM. S. NOYES,
Vice-President." [373]

W. F. R. (6) Feb. 15, 1919.

I have filed a copy of this letter and the original report of Mr. Handy in the office of the Presidio Mining Company, and have sent a copy of this letter to defendants' attorneys.

Respectfully,
(Signed) WALTER B. MALING,
Receiver Presidio Mining Company.

Copy of the within answer received this 1st day of July, 1921.

R. J. HARDING and
HENRY E. MONROE,
Solicitors for Defendants.
FRANK R. WEHE,
By C. R. JOHNSON,
Attorney for Receiver.

[Endorsed]: Filed Jul. 1, 1921. W. B. Maling,
Clery. By J. A. Schaertzer, Deputy Clerk. [374]

In the Southern Division of the United States
District Court for the Northern District of
California, Second Division.

No. 196—IN EQUITY.

W. S. OVERTON and CARL A. MARTIN,
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,
WM. S. NOYES, B. S. NOYES, L. OS-
BORN, JOHN W. F. PEAT, and L. M.
DOHERTY,

Defendants.

**Affidavit of Walter B. Maling on Defendants'
Exceptions and Objections to the Fourth and
Final Account and Report of Receiver, and
all Prior Accounts and Reports.**

State of California,

City and County of San Francisco,—ss.

Walter B. Maling, being first duly sworn, deposes
and says:

That I am the Receiver in the above-entitled
action, and that immediately after my appointment
as such Receiver in February, 1918, and prior to
the 26th day of March, 1918, I appointed Mr. F. C.
Handy to act as my representative in Texas, and
placed him in charge of the mining operations of
the Presidio Mining Company at Shafter, Texas.
That immediately after said appointment I fixed
the salary of said representative tentatively at

Four hundred and fifty (450) Dollars per month, and thereupon and prior to said 26th day of March, 1918, [375] instructed my attorney, Frank R. Wehe, Esq., to make a full report concerning the matter, including the qualifications and ability of Mr. Handy to satisfactorily fill the position mentioned, to the attorneys for all of the parties to said action, with a view to having the same understood by them and to get their consent to the rate of salary paid.

That on March 29th, 1918, said attorney reported to me that he had informed the attorneys for all of the parties to said action of the above, and he delivered to me a letter from William F. Rose, attorney for complainants, in the words and figures following, to wit:

“San Francisco, March 26, 1918.

Frank R. Wehe, Esq.,

74 New Montgomery St.,

City.

My dear Sir:—

Replying to your communication of March 23d relative to salary of Mr. Handy:

On the strength of your report to me relative to Mr. Handy's qualifications and ability to satisfactorily fill the position as representative of the receiver at the Presidio Mine in full charge of its affairs, I see no objection to paying him the sum of \$450.00 monthly as salary, and hereby consent thereto for and on behalf of complainants in the

suit of Overton v. Presidio Mining Company, et al., in which suit Mr. Maling is the receiver.

Very truly yours,
(Signed) WM. F. ROSE."

the original of which is annexed hereto.

Also delivered to me a letter from Messrs. R. T. Harding and J. J. Dunne in the words and figures following, to wit: [376]

"San Francisco, Mar. 28, 1918.

"Frank R. Wehe, Esq.,
74 New Montgomery St.,
San Francisco, Cal.

My dear Sir:—

Replying to your communication of March 27th relative to salary of Mr. Handy:—

On the strength of your report to me relative to Mr. Handy's qualifications and ability to satisfactorily fill the position as representative of the Receiver at the Presidio Mine, in full charge of its affairs, I see no objection to paying him the sum of \$450 monthly as salary and hereby consent thereto for and on behalf of defendants in the suit of Overton vs. Presidio Mining Company, et als., in which suit Mr. Maling is the Receiver.

Yours very truly,
(Signed) R. T. HARDING
J. J. DUNNE."

the original of which is annexed hereto.

Also at about the same time I instructed said attorney to take up with the attorneys for the parties the question of the employment of a book-

keeper in the San Francisco office, and inasmuch as John W. F. Peat was the Secretary of the Presidio Mining Company at that time, I considered it to the interests of the trust to continue said Peat as the bookkeeper at the Company's office for the purpose of keeping my accounts as Receiver, but did not care to do so without the consent of all of the parties inasmuch as said Peat was a defendant in the action. I was shortly thereafter informed by Mr. Wehe that he had taken the matter up with the attorneys and he delivered to me a stipulation signed by the attorneys for the parties and in the words and figures following, to wit:

(Title of Court and Cause.)

"It appearing to the attorneys for the parties to the above-entitled actions that the Receiver herein desires to employ JOHN W. F. PEAT, former Secretary of [377] the Presidio Mining Company, as his bookkeeper in keeping the accounts and books of said Presidio Mining Company at its office at the City and County of San Francisco, of which office said Receiver is now in possession, but that he does not desire to make the appointment without the consent of all parties to said action inasmuch as said Peat is a party defendant, to said action;

IT IS HEREBY STIPULATED that said parties, by their respective attorneys, consent to the employment of said Peat as such bookkeeper at a salary of not to exceed One Hundred (100) Dollars per month, without complainants waiving any rights against said defendant, John W. F. Peat.

Dated this 21st day of March, One thousand nine hundred and eighteen (1918).

WM. F. ROSE,
Attorney for Complainants.
R. T. HARDING,
J. J. DUNNE,
Attorneys for Defendants.”

the original of which is annexed hereto.

That I continued said Peat as bookkeeper until he became sick and resigned, and then appointed a successor, and afterwards that bookkeeper resigned, and I appointed Miss Handy, who was the bookkeeper until I turned the office over to the defendant Presidio Mining Company.

That during all times during my receivership a bookkeeper was a necessity for the proper discharge of my duties as such Receiver.

That during all of the time of my receivership I have to the best of my ability conducted and managed the said trust in good faith as economically as conditions would permit, and for the best interests of the parties to said action and as [378] ordered by the Court.

WALTER B. MALING.

Subscribed and sworn to before me this 5th day of August, 1921.

[Seal] J. A. SCHAERTZER,
Deputy Clerk, U. S. District Court, Northern District of California. [379]

Law Offices
WILLIAM F. ROSE,
614 Mills Building,
San Francisco.

Sutter 46.

March 26, 1918.

Frank R. Wehe, Esq.,
74 New Montgomery St.,
City.

My dear Sir:

Replying to your communication of March 23d relative to salary of Mr. Handy:

On the strength of your report to me relative to Mr. Handy's qualifications and ability to satisfactorily fill the position as representative of the receiver at the Presidio Mine in full charge of its affairs, I see no objection to paying him the sum of \$450.00 monthly as salary, and hereby consent thereto for and on behalf of complainants in the suit of Overton vs. Presidio Mining Company, et al., in which suit Mr. Maling is the receiver.

Very truly yours,

W. F. ROSE.

San Francisco, Mr. 28, 1918.

Frank R. Wehe, Esq.,
74 New Montgomery St.,
San Francisco, Cal.

My dear Sir:

Replying to your communication of March 27th relative to salary of Mr. Handy:

On the strength of your report to me relative to

Mr. Handy's qualifications and ability to satisfactorily fill the position as representative of the Receiver at the Presidio Mine, in [380] full charge of its affairs, I see no objection to paying him the sum of \$450.00 monthly as salary and hereby consent thereto for and on behalf of defendants in the suit of Overton vs. Presidio Mining Company, et al., in which suit Mr. Maling is the Receiver.

Yours very truly,

R. T. HARDING.

J. J. DUNNE.

(Title of Court and Causes.)

It appearing to the attorneys for the parties to the above-entitled actions that the Receiver herein desires to employ John W. F. Peat, former Secretary of the Presidio Mining Company, as his bookkeeper in keeping the accounts and books of said Presidio Mining Company at its office at the City and County of San Francisco, of which office said Receiver is now in possession, but that he does not desire to make the appointment without the consent of all parties to said action inasmuch as said Peat is a party defendant to said action;

It is hereby stipulated that said parties, by their respective attorneys, consent to the employment of said Peat as such bookkeeper at a salary of not to exceed One Hundred (100) Dollars per month, without complainants waiving any rights against said defendant, John W. F. Peat.

Dated this 21st day of March, one thousand nine hundred and eighteen (1918).

WM. F. ROSE,
Attorney for Complainant.

R. T. HARDING,

J. J. DUNNE,

Attorneys for Defendants.

Due service and receipt of a copy of the within affidavit is hereby admitted this 6th day of August, one thousand nine hundred and twenty-one (1921).

R. T. HARDING,

HENRY E. MONROE,

Solicitors for Defendants. [381]

Personally delivered copy hereof to clerk of R. T. Harding, solicitor for defendants, and to the clerk of Wm. F. Rose same for complainants, at the office of each in this city on August 6th, 1921, at about 9:20 A. M., both being absent from their office.

FRANK R. WEHE.

[Endorsed]: Filed Aug. 8, 1921. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [382]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 196—IN EQUITY.

W. S. OVERTON and CARL A. MARTIN,
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,
et al.,

Defendants.

Memorandum Opinion.

VAN FLEET, District Judge:

EXCEPTIONS TO RECEIVER'S ACCOUNT.

Defendants have misapprehended not only the proper time but the form in which to ask the relief they are really seeking. There is no exception taken to the correctness or propriety of any particular item of the Receiver's account but the objection really is to the items of that account being charged or allowed against the fund administered, the contention being that they should under the circumstances of the case be charged to the plaintiff who procured the appointment of the Receiver. But that question will more properly arise on a motion to tax the costs upon the entry of the final decree.

Whether the objection that the court had no jurisdiction in the cause dwelt upon at such length is

made seriously it is difficult to know but, if it is, it is without merit as could readily have been ascertained by reference to the decree of the Circuit Court of Appeals wherein the decree of this Court was affirmed in its major features. That, of course, could [383] not have been done in the absence of jurisdiction in this court since the appellate court could have no jurisdiction to enter a decree upon the merits if jurisdiction was lacking here. The order appointing the Receiver was reversed merely on the ground that the facts of the case in the opinion of the Circuit Court of Appeals did not warrant it, not that there was a want of *jurisdiction* to make it. In other words, the order appointing the Receiver was reversed merely on the ground that jurisdiction was erroneously exercised. It is axiomatic that if a court has jurisdiction in a case it has the same power to decide erroneously as to decide correctly without exceeding its jurisdiction. *United States vs. Arredondo*, 6 Peters (U. S.), 691. Counsel have evidently confused the commission of mere error with an excess of jurisdiction. The two things are as far apart as the poles.

That this Court had power to appoint a Receiver under proper circumstances in a case of this impression no real question can be made. 1 Clark on Receivers, Section 238. This being so, it has authority to provide for his compensation either out of the fund administered or at the hands of the party procuring his appointment. *Atlantic Trust Company vs. Chapman*, 208 U. S. 360; *People vs. Oriental Bank*, 114 N. Y. Supp. 440; *Sullivan Lum-*

ber Company vs. Black, 48 So. Reporter 870; State of Texas vs. Palmer, 158 Fed. 705, (S. C.) 212 U. S. 131. The Receiver not having been appointed upon his own application is not to take the hazard of the propriety of such appointment. He becomes the arm of the court and it is the duty of the latter to see that his service is compensated. Nor does it necessarily follow that because his appointment was erroneously made the expense and compensation may not be directed to be paid out of the fund coming into his hands. (See cases above cited.) That depends upon the circumstances of the case. [384] As suggested, however, the question does not properly arise at this stage of the proceedings. But that the Court may direct the payment of the Receiver's accounts out of the fund in his hands in the first instance there is likewise no question. (See cases last cited.)

In this instance when the Receiver took charge of the mine he found it in the neighborhood of \$100,000.00, a little more or less, in debt. After administering it for a period of shortly over three years he has by honest and efficient management turned it back with the expenses of operation fully paid and with something in excess of \$600,000.00 in its treasury. Certainly the laborer is worthy of his hire. Who ultimately is to pay that hire may be reserved until it properly arises.

The exceptions are overruled and an order may be drawn approving and confirming the report of the Receiver and providing for the compensation of himself and his counsel; and that for the present

such compensation to be paid out of the balance of the fund left in his hands for the purpose.

[Endorsed]: Filed Sep. 28, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [385]

(Title of Court and Cause.)

Order Confirming Fourth and Final Report and Account of Receiver and Allowing Compensation to Said Receiver and His Attorney.

The Court having heretofore on May 6th, 1921, on motion of R. T. Harding, solicitor for the defendants, ordered Walter B. Maling, Receiver herein, to turn over and deliver to the defendant, Presidio Mining Company, all of the property of said defendant in his possession, or under his control as such Receiver, except the sum of Five Thousand (5000) Dollars, which was to be retained by said Receiver in order to satisfy any balance of compensation and expenses in the receivership, including attorneys' fees which might be allowed him in his final account; and thereafter on the 27th day of May, one thousand nine hundred and twenty-one (1921), said Receiver having filed herein his fourth and final report and account of his administration covering the period from October 31st, 1920, to and including the time of said account, from which it appears that he has fully accounted for all of his receipts and disbursements during said time, and that he has delivered all of the property of every kind and nature taken possession of by him, and

the replacement thereof in cases where portions thereof have been consumed, and all funds and securities, except the said Five Thousand (5000) Dollars, and the offices, books and papers, both in California and in Texas, to said Presidio Mining Company; that he has paid out of said Five Thousand (5000) Dollars certain sums due to employees of said Receiver for salaries and expenses up to May 11th, 1921, amounting to [386] the sum of Five Hundred and Twenty-five (525) Dollars, and since said account, and on September 2d, 1921, he has paid the sum of Ten (10) Dollars clerk's fees, and has received as interest on the balance of said Five Thousand (5000) Dollars the sum of Fifty-nine and 68/100 (59.68) Dollars, leaving a balance of money now in his hands of Four Thousand Five Hundred and Twenty-four and 68/100 (4524.68) Dollars;

That it having been admitted by the parties to the action, through their respective counsel, on the hearing on said account and report, that said account and report was mathematically correct; and all objections and exceptions to said report and account made by the defendants herein having been heard by the Court and submitted for decision;

IT IS HEREBY ORDERED that all acts and things done by said Receiver, as well as said fourth and final report and account herein, be and they are hereby approved and confirmed, and that all objections and exceptions thereto are hereby disallowed.

It further appearing to the Court that said Receiver and his counsel have been paid no compensation since the 31st day of December, 1920; that said

balance of Four Thousand Five Hundred and Twenty-four and 68/100 (4524,68) Dollars is all the funds that are now in the hands of said Receiver; and that it is conceded by all parties to the action that the compensation and fees heretofore allowed said Receiver and his counsel in former accounts, viz: at the rate of Five Thousand (5000) Dollars per year each, is reasonable in amount;

IT IS FURTHER ORDERED that said balance now remaining in the hands of said Receiver be divided between the said Receiver and his counsel, Frank R. Wehe, that is to say: [387] That said Receiver pay to himself in full for Receiver's compensation since said last-mentioned date the sum of Two Thousand Two Hundred and Sixty-two and 34/100 (2262.34) Dollars and to Frank R. Wehe, his counsel, in full for counsel fees since said date a like sum of Two Thousand Two Hundred and Sixty-two and 34/100 (2262.34) Dollars; and that said Receiver be and he is hereby discharged and his bondsmen exonerated.

IT IS FURTHER ORDERED that all other questions raised by defendants on this hearing be and they are hereby postponed for determination until the hearing on the final decree herein.

Done in open court this 29th day of September one thousand nine hundred and twenty-one (1921).

WM. C. VAN FLEET,

Judge of said Court.

[Endorsed]: Filed Sep. 29, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.
[388]

In the Southern Division of the United States District Court for the Northern District of California, Southern Division.

IN EQUITY—No. 196.

W. S. OVERTON and CARL A. MARTIN,
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,
WM. S. NOYES, B. S. NOYES, L. OSBORN,
JOHN W. F. PEAT, and L. M. DOHERTY,

Defendants.

**Supplemental Account of Walter B. Maling,
Formerly Receiver Herein, Showing Disposition
of Money on Hand at Date of Decree of
Discharge on the 29th Day of September, 1921,
Including Trial Balance for Period Ending
on that Date.**

WALTER B. MALING, formerly Receiver herein, presents and files the following as supplemental to his final report and account herein:

That on the 29th day of September, one thousand nine hundred and twenty-one (1921), said Court entered a Decree discharging him as such receiver, at which time there was in his hands a balance of Four Thousand Five Hundred and Twenty-four and 68/100 (4,524.68) Dollars, as appears by said Decree.

That he disbursed said sums as follows:

He paid to himself in full for Receiver's compensation subsequent to the 31st day of December, one thousand nine hundred and twenty (1920), the sum of Two Thousand Two Hundred and Sixty-Two and 34/100 (2262.34) Dollars.

He paid to Frank R. Wehe, his counsel, in full for counsel fees for the same period the sum of Two Thousand Two Hundred [389] and Sixty-two and 34/100 (2262.34) Dollars.

That said disbursements, added to the payments theretofore made and money, securities and property turned over to the Presidio Mining Company, entirely exhausted the funds in his hands, and he has now fully accounted for all sums of money, securities and property ever held by him as such Receiver.

That immediately upon making said payments he caused a balance sheet for the period ending September 29th, 1921, and including said payments, to be made, a true copy of which is annexed hereto and marked Exhibit "A" and is filed herewith.

Respectfully submitted,

WALTER B. MALING.

FRANK R. WEHE,

Attorney for said Walter B. Maling. [390]

Exhibit "A."

WALTER B. MALING, RECEIVER
PRESIDIO MINING COMPANY.

Trial Balance for Period Ending September 29th,

1921.

Supplies	\$35,873.13	61	Interest.	\$ 745.43
17 Mill	17,637.03	67	Exps at Mine—Mtls	143.43
121 Mine	11,161.52	71	Capital Stock	150,000.00
43 Fuel: Wood....	67.33	76	Profits & Loss.....	128,638.74
108 Fuel: Oil	7,007.25	81	W. S. Noyes, Tr.	105,903.88
32 Mill	64,620.30	89	Surplus	374,943.69
37 Salary	2,100.00	98	Contgt a/cs Pay,	35,789.07
78 Rope Tramway	24,772.34	103	Resv for Deprn,	252,988.80
79 Surface Track	7,359.25	103	Resv for Depln,	110,845.08
82 Mine	175,099.32	104	Contgt Surplus	200,345.33

84	Taxes—Shafter	25.00	112	Bond Interest	8,973.72
87	Marfa Nat. Bk. Special a/c	17,230.27	117	Bullion	167,613.89
91	Mill Labor	15,337.50			
92	Expense Labor	5,181.35			
93	Ore Transportation—Labor	2,656.20			
96	Taxes—San Francisco	5,698.27			
98	Contgt a/cs Receivable ...	211,355.08			
99	Administration Expense...	625.00			
101	Anglo & London Paris Nat. Bk.	351.17			
102	Furniture & Fixtures.	341.50			
104	Permanent Improvements.	43,820.83			
105	Auditing	100.00			
105	Sundry Cap. Expenditures &	124,247.73			
106	Ore Transportation—Mtls.,	704.36			
109	Mine Labor	42,969.20			
111	Traveling Expenses,	100.00			

112	Receivership Expense	4,584.68	
115	Assay Office	478.45	
116	Automobile Expense	2,522.71	
116	Team Expense	11.80	
118	Mine Expense Matls.,	14,893.14	
119	Liberty Loan Bonds	501,942.56	
120	Mill Expense Matls	32,987.20	
122	Plant, Bldgs & Equip.— Matls.	103,688.25	
123	General Expense.	382.90	
	Cash on hand:	94,871.74	
	At San Francisco, 90257.77		
114	Superintendent..	4613.97	
			<hr/>
			\$1,536,931.23
			<hr/>

[Endorsed]: Filed Oct. 22, 1921. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [391]

At a stated term, to wit, the March term, A. D. 1921, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom in the City and County of San Francisco, on Friday, the 6th day of May, in the year of our Lord one thousand nine hundred and twenty-one. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 196—EQ.

W. S. OVERTON et al.

vs.

PRESIDIO MINING CO. et al.

**(Order Directing Mandate to be Spread on
Minutes.)**

Upon motion of R. T. Harding, Esq., attorney for defendants herein, it is ordered that the Mandate of the United States Circuit Court of Appeals for the Ninth Circuit, herein be filed and spread upon the minutes of this Court, which said Mandate is in the words and figures following, namely:
[392]

(Mandate.)

UNITED STATES OF AMERICA,—ss:

[Seal U. S. Circuit Court of Appeals.]

The President of the United States of America,
to the Honorable the Judges of the Southern
Division of the District Court of the United
States for the Northern District of California,
Second Division, GREETING:

WHEREAS, lately in the Southern Division of the District Court of the United States for the Northern District of California, Second Division, before you, or some of you, in a cause between W. S. Overton and Carl A. Martin, Complainants, and Presidio Mining Company, a corporation, Wm. S. Noyes, B. S. Noyes, L. Osborn, John W. F. Peat and L. M. Doherty, defendants, No. 196, an interlocutory decree was duly filed and entered on the 16th day of February, A. D. 1918, and an order appointing Receiver was duly filed on the 20th day of February, A. D. 1918, which said interlocutory decree and order are of record and fully set out in said cause in the office of the Clerk of the said District Court, to which record reference is hereby made and the same is hereby expressly made a part hereof, and as by the inspection of the Transcript of the Record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Ninth Circuit by virtue of appeals prosecuted by Presidio Mining Company, a corporation, Wm. S. Noyes, B. S. Noyes, L. Osborn, John W. F. Peat and L. M. Doherty, as appellants against W. S. Overton, and Carl A. Martin, on Behalf of Themselves and Other Minority Stockholders of the Presidio Mining Company Named in This Complaint, as appellees agreeably to the Act of Congress in such cases made and provided, [393] fully and at large appears:

AND WHEREAS, on the 21st day of May in the year of our Lord one thousand nine hundred and twenty, the said cause came on to be heard

before the said Circuit Court of Appeals, on the said Transcript of the Record and was duly argued and submitted:

ON CONSIDERATION WHEREOF, it is now here ORDERED, ADJUDGED, AND DECREED by this Court, that that part of the interlocutory decree of the said District Court providing:

“That in and by said final decree the said William S. Noyes shall be ordered and directed within thirty (30) days from the date thereof to transfer said Section 5 to said Presidio Mining Company by proper deed free and clear of all liens and encumbrances”

will stand affirmed.

That part of the said decree relating to the payment of the purchase price of the property to William S. Noyes providing:

“That said William S. Noyes be credited with the purchase price of Section 5, together with interest thereon at the rate of seven per cent per annum from January 25, 1913, and also any sums which may be found to have been paid by said William S. Noyes for the use and benefit of said Presidio Mining Company, together with interest on said sums at the rate of seven per cent per annum from the date of payments”

will stand affirmed.

That part of the said decree will run against the Presidio Mining Company and its officers and directors and will be as of the date of February 16, 1918. The [394] amount due thereon to be as-

certained by a reference to the accountants Klink, Bean & Co.

The final decree will also provide for the payment to William S. Noyes the amount due him under the lease of November 19, 1913, from January 25, 1913, to February 16, 1918. The amount to be ascertained by a reference to the accountants Klink, Bean & Co., with direction to extend and complete their schedules as they appear in the record and are there numbered, 4, 5, 6, 7, 8, and 9 so as to include in like manner but in a condensed form, all royalties due and payable to William S. Noyes for the years 1916, 1917 down to February 16, 1918.

In this computation Wm. S. Noyes will be charged with \$3,500, which we find was in effect paid to him on September 6, 1913, and was applied by his direction to make good a further shortage in the accounts of L. Osborn. This amount is included in the statement made by Noyes that up to December 31, 1915, he had received \$63,336.20. To the amount thus found due William S. Noyes under the lease of November 19, 1913, will be added the amount found due him on the purchase price of Section 5, and for the full sum so found due him the final decree will run against the Presidio Mining Company, its officers and directors. The said interlocutory decree of the said District Court in all other respects not herein mentioned will be reversed and set aside, the interlocutory injunction dissolved and the receiver discharged. The plain-

tiffs and defendants will each pay their own costs in this court.

(January 17, 1921.)

YOU, THEREFORE, ARE HEREBY COMMANDED that such execution and further proceedings be had in the said cause in accordance with the opinion and decree of this Court and as according to right and justice and the laws of the United States ought to be had, the said decree [395] and order of the said District Court notwithstanding.

Witness, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, the 3d day of May, in the year of our Lord one thousand nine hundred and twenty-one.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

[Endorsed]: Filed and spread on minutes of U. S. District Court, Northern District of California, the 6th day of May, 1921. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [396]

In the Southern Division of the United States
District Court for the Northern District of
California, Second Division.

PRIMARY SUIT.

No. 196—EQUITY.

W. S. OVERTON and CARL A. MARTIN,
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,
WM. S. NOYES, B. S. NOYES, L. OSBORN,
JOHN W. F. PEAT and L. M. DOHERTY,
Defendants.

In the District Court of the United States, for the
Western District of Texas, at El Paso.

AUXILIARY SUIT.

No. 114—EQUITY.

W. S. OVERTON and CARL A. MARTIN,
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,
WM. S. NOYES, B. S. NOYES, L. OSBORN,
JOHN W. F. PEAT and L. M. DOHERTY,
Defendants.

**Order Authorizing Receiver to Deliver Property to
Defendant Presidio Mining Company.**

The Mandate from the United States Circuit
Court of Appeals for the Ninth Circuit in this case

having been presented and spread upon the minutes of this Court:

NOW, THEREFORE, on motion of R. T Harding, solicitor for the defendants (but said defendants not waiving directly or indirectly, but on the contrary expressly reserving all objections heretofore made to said receivership, and also the right to claim upon the coming in and settlement of the final account of said Receiver, and at all times and upon all [397] other occasions, that he, the said Receiver, must account for and return to the possession of said defendant corporation Presidio Mining Company, all of the property which has come into his hands as such Receiver without deduction for costs, judicial allowances, or expenses and/or Receiver's compensation, attorney's fees, commissions, or other charges of said receivership; and now, and at all times, insisting that all such charges must be paid by the complainants who have caused said Receiver to be appointed.) IT IS HEREBY ORDERED that Walter B. Maling, Receiver heretofore appointed, turn over and deliver to the defendant Presidio Mining Company all of the property of said defendant in his possession or under his control as such Receiver, except the sum of Five Thousand (\$5000) Dollars, which is to be retained by him in order to satisfy any balance of commissions ad expenses of the receivership, including attorney's fees, which may be allowed him in his final account.

That said Receiver take from said Presidio Mining Company such receipts and acknowledgments

as will evidence the payment and delivery of said property, and that he file herein a report and account of his receivership since his last report and account and present the same to this Court.

That immediately upon the entry of this order herein that the Clerk of this Court certify to a copy thereof and cause the same to be filed with the Clerk of the District Court of the United States for the Western District of Texas, at El Paso, in the auxiliary suit of Overton et al. vs. Presidio Mining Company, et al., No. 114—Equity.

Done in open court this 6th day of May, one thousand nine hundred and twenty-one (1921).

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed May 6, 1921. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy clerk.
[398]

In the Southern Division of the United States
District Court for the Northern District of
California, Southern Division.

IN EQUITY—NO. 196.

W. S. OVERTON and CARL A. MARTIN,
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,
WM. S. NOYES, B. S. NOYES, L. OSBORN,
JOHN W. F. PEAT and L. M. DOHERTY,
Defendants.

Petition for Appeal from "Order Confirming Fourth and Final Report and Account of Receiver, and Allowing Compensation to Said Receiver and His Attorney," Given and Made in Said Cause and Court on September 29, 1921, by Honorable Wm. C. Van Fleet, Judge Thereof, and Filed in Said Cause and Court and With the Clerk of Said Court on Said September 29, 1921.

Now comes the above-named defendants and feeling themselves aggrieved by that certain order made and entered in the above-entitled cause and court, and entitled "Order Confirming Fourth and Final Report and Account of Receiver, and Allowing Compensation to said Receiver and his Attorney," given and made in said cause and court on September 29, 1921, by Honorable Wm. C. Van Fleet, Judge of said Court, and filed in said cause and court, and with the clerk of said [399] court, on said September 29, 1921, do hereby appeal from said order, and from the whole thereof, to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in said defendants' assignments of errors, which is filed herewith, and they pray that this their appeal be allowed, and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said order was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth

Circuit, sitting at San Francisco, in the State of California.

And your petitioners further pray that the proper order touching the security to be required of them to perfect this appeal be made.

Dated at San Francisco this 27th day of March, 1922.

PRESIDIO MINING COMPANY, a Corporation,
WM. S. NOYES,
B. S. NOYES,
L. OSBORN,
JOHN W. F. PEAT,
L. M. DOHERTY,

Said Defendants.

By R. T. HARDING and
HENRY E. MONROE,
Solicitors for said Defendants.

J. J. DUNNE.

Of Counsel for said Defendants.

[Endorsed]: Filed Mar. 27, 1922. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [400]

In the Southern Division of the United States
District Court for the Northern District of
California, Southern Division.

No. 196—IN EQUITY.

W. S. OVERTON and CARL A. MARTIN,

Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,
WM. S. NOYES, B. S. NOYES, L. OS-
BORN, JOHN W. F. PEAT and L. M.
DOHERTY,

Defendants.

**Assignment of Errors on Appeal from "Order Con-
firming Fourth and Final Report and Account
of Receiver, and Allowing Compensation to
Said Receiver and His Attorney," and from
Memorandum Opinion.**

Now, on the 27th day of March, 1922, come the
defendants, Presidio Mining Company, a corpora-
tion, Wm. S. Noyes, B. S. Noyes, L. Osborn, John
W. F. Peat and L. M. Doherty, by their solicitors,
R. T. Harding and Henry E. Monroe, and say that
there is manifest error on the face of the record in
the above-entitled suit, and that the Memorandum
Opinion filed herein on the 29th day of September,
1921, is erroneous, and that the "Order Confirming
Fourth and Final Report and Account of Receiver,
and Allowing Compensation to said Receiver and

his Attorney" made and entered in said suit on the 29th day of September, 1921, is erroneous and unjust to these defendants, and defendants hereby assign the making, giving [401] and entering of said Memorandum Opinion and of said order herein as error, for the following reasons, and now make, file and present the following assignments of error upon which they and each of them will rely, as follows, to wit:

EXCEPTION I.

That the Court erred in finding and decreeing in said memorandum opinion that the question whether the costs and expenses of the Receiver herein shall be charged to the plaintiffs, who procured his appointment, does not arise, and was not properly presented to the Court, upon the hearing for the settlement of receiver's final report and account.

EXCEPTION II.

That the Court erred in finding and decreeing in said memorandum opinion that the question whether the costs and expenses of the Receiver herein shall be charged to the plaintiffs, who procured his appointment, "will more properly arise on a motion to tax the costs upon the entry of the final decree."

EXCEPTION III.

That the Court erred in finding and decreeing in said memorandum opinion and in said order that under the circumstances of this case the Court may direct the payment of the Receiver's account out of the fund in his hands in the first instance.

EXCEPTION IV.

That the Court erred in finding and decreeing in

said memorandum opinion that it had authority to provide for the compensation of the Receiver and his attorney out of the fund administered; and this assignment of error is based upon the reason that at the time of the filing of said memorandum opinion it had been adjudged by a final judgment and decree of the United States [402] Circuit Court of Appeals for the Ninth Circuit in this cause (Numbered 3253 on the files of that Court), that there was no necessity for the appointment of a Receiver in this cause, and that the appointment of said Receiver was improper and illegal.

EXCEPTION V.

That the Court erred in finding and decreeing in said memorandum opinion that it had authority to provide for the compensation of the Receiver and his attorney out of the fund administered; and that this assignment of error is based upon the reason that at the time of the filing of said memorandum opinion it had been adjudged by a final judgment and decree of the United States Circuit Court of Appeals for the Ninth Circuit in this cause (Numbered 3253 on the files of that Court), that this Court had no power to appoint a Receiver in this cause, and that the appointment of said Receiver was improper and illegal.

EXCEPTION VI.

That the Court erred in and by said memorandum opinion and/or order in overruling the defendants' exceptions and objections to the fourth and final report and account of Receiver, and allowing compensation to said Receiver and his attorney.

EXCEPTION VII.

That the Court erred in finding and decreeing that when the Receiver took charge of the mine of the defendant, Presidio Mining Company that he found it in the neighborhood of \$100,000.00, a little more or a little less, in debt; instead of finding and decreeing that said Presidio Mining Company had at the time the Receiver took charge of said mine, a total of net liquid assets in excess of \$100,000.00, over and above all debts and liabilities. [403]

EXCEPTION VIII.

That the Court erred in finding and decreeing in and by said memorandum opinion that the Receiver after administering said mine for a period of shortly over three years, turned it back with the expenses of operation fully paid and with something in excess of \$600,000.00 in the treasury of said Presidio Mining Company, without also finding that there was due and owing from the Presidio Mining Company to Wm. S. Noyes under the lease of November 19, 1913, the sum of approximately \$154,000.00, in accordance with the final judgment or decree of the United States Circuit Court of Appeals for the Ninth Circuit: and without also finding that at the time the Receiver took charge of said mine there was turned over to said Receiver, in liquid assets in money, liberty bonds and mining supplies of the net value of \$192,279.99.

EXCEPTION IX.

That the Court erred in ordering in and by the "Order Confirming Fourth and Final Report and Account of Receiver, and Allowing Compensation

to said Receiver and his Attorney," that all acts and things done by said Receiver, as well as the said fourth and final report and account herein, be approved and confirmed, and that all objections and exceptions of the defendants thereto be disallowed.

EXCEPTION X.

That the Court erred in ordering, in and by the "Order Confirming Fourth and Final Report and Account of Receiver and his Attorney," that the balance then remaining in the hands of the Receiver, to wit, the sum of \$4524.68, be divided between said Receiver and his counsel, Frank R. Wehe, and that said Receiver be discharged, and his bondsmen exonerated. [404]

EXCEPTION XI.

That the Court erred in ordering in and by the "Order Confirming Fourth and Final Report and Account of Receiver, and Allowing Compensation to said Receiver and his Attorney," that all other questions raised by the defendants on the hearing of the fourth and final report and account of the Receiver be postponed, for determination, until the hearing on the final decree herein.

EXCEPTION XII.

That the Court erred in overruling the objections and exceptions of the defendants to the allowance to said Receiver of the following items and amounts contained in the first report and account of said Receiver filed herein on the 2d day of November, 1918, and in a supplemental report thereto filed herein on the 28th day of December, 1918, to wit:

\$4270.76 paid to Walter B. Maling, as Receiver's fees.

\$4270.76 paid to Frank R. Wehe on account of attorney's fees.

\$70.00 Court fees.

\$4500.00 paid to F. C. Handy, Receiver's Assistant at Shafter, Texas, ten months at \$450 per month.

\$988.33 paid to Receiver's bookkeeper at varying rates.

\$50.00 paid for premium on Receiver's bond.

\$579.25 paid for traveling expenses from San Francisco to the mine at Shafter, Texas, and return for W. B. Maling, F. R. Wehe and F. C. Handy.

EXCEPTION XIII.

That the Court erred in overruling the objections and exceptions of the defendants to the allowance to said Receiver of the following items and amounts contained in the second report and account of said Receiver filed herein on the 10th day of December, [405] 1919, to wit:

\$5000.00 paid to Walter B. Maling, as Receiver's fees.

\$5000.00 paid to Frank R. Wehe as attorney's fees for said Receiver.

\$5400.00 paid to F. C. Handy, Receiver's Assistant at Shafter, Texas.

\$1225.00 paid to Receiver's bookkeeper.

\$50.00 paid on account of premium on Receiver's bond.

\$546.56 traveling expenses of W. B. Maling, F. R. Wehe and F. C. Handy.

\$3679.40 paid to Haskins & Sells, certified accountants.

\$2500.00 as fees paid to the Master in Chancery herein.

EXCEPTION XIV.

That the Court erred in overruling the objections and exceptions of the defendants to the allowance to said Receiver of the following items and amounts contained in the third report and account of said Receiver filed herein on the 30th day of November, 1920, to wit:

\$5000.00 paid to Walter B. Maling, as Receiver's fees.

\$5000.00 paid to Frank R. Wehe, as attorney's fees for said Receiver.

\$5400.00 paid to F. C. Handy as Receiver's Assistant at Shafter, Texas.

\$1500.00 paid to Receiver's bookkeeper.

\$50.00 paid as premium on Receiver's bond.

EXCEPTION XV.

That the Court erred in overruling the objections and exceptions of the defendants to the allowance to said Receiver of the following items and amounts contained in the fourth and final [406] report and account of Receiver filed herein on the 27th day of May, 1921, to wit:

\$2100.00 paid to F. C. Handy, the Receiver's assistant at Shafter, Texas.

\$500.00 paid to receiver's bookkeeper.

\$50.00 paid on account of premium on receiver's bond.

EXCEPTION XVI.

That the Court erred in not ordering and adjudging that the Receiver must return to the defendants all the property which came into his possession as such Receiver without deduction for the costs and expenses of the receivership herein, and that he be allowed in his accounts only such expenditures as the defendants, Presidio Mining Company, would have been compelled to make in the usual and ordinary conduct of its mining business.

EXCEPTION XVII.

That the Court erred in not ordering and adjudging that the Receiver must return to the defendants all the property which came into his possession as such Receiver without deduction for the costs and expenses of the receivership herein, and that he be allowed in his accounts only such expenditures as the defendant, Presidio Mining Company, would have been compelled to make in the usual and ordinary conduct of its mining business, but that said Receiver have judgment against the complainants for the full amount of costs and expenses of the receivership herein.

EXCEPTION XVIII.

That the Court erred in ordering and adjudging that the costs and expenses of the receivership be paid out of the funds in the hands of the Receiver in the first instance, and in not also ordering and adjudging that the Presidio Mining Company and/or [407] the defendants have judgment against the complainants for the full amount of the costs and expenses of the receivership.

EXCEPTION XIX.

That the Court erred in not sustainig and/or allowing the objections and exceptions of the defendants to the fourth and final report and account of Receiver, and each and all of the objections and exceptions to each and all of the preceding reports and accounts of said Receiver.

WHEREFORE, the defendants pray that said "Order Confirming Fourth and Final Report and Account of Receiver, and Allowing Compensation to said Receiver and his Attorney," be reversed and set aside and that the District Court be directed to sustain the objections and exceptions of the defendants to said fourth and final report and account of the Receiver, and to all preceding reports and accounts of the Receiver, and that said Receiver be directed to return to the defendants all property which came into his possession as such Receiver without deductions for the costs and expenses of the receivership herein, and that he be allowed in his accounts only such expenditures as the defendant, Presidio Mining Company, would have been compelled to make in the usual and ordinary conduct of its mining business; and that said Receiver have judgment against the complainant for the full amount of costs and expenses of the receivership herein; or that said District Court be directed to sustain the objections and exceptions of the defendants to said fourth and final report and account of the Receiver and to all preceding reports and accounts of the Receiver, and that said District Court be directed to ascertain and determine the full sum

or amount of the costs and expenses of said receivership by deducting from the full amount of the expenditures and [408] payments made by the Receiver, including his own compensation and that of his attorney, the expenditures which the Presidio Mining Company would have been compelled to make in the usual and ordinary conduct of its mining business, and that said District Court be further ordered and directed to enter a judgment in favor of the defendant, the Presidio Mining Company and against the complainants for the difference, that is, for the costs and expenses of said receivership, and that said defendants or either or any of them may have such further relief as may seem meet and equitable.

R. T. HARDING and
HENRY E. MONROE,
Solicitors for Defendants.

J. J. DUNNE,
Of Counsel.

[Endorsed]: Filed Mar. 27, 1922. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [409]

In the Southern Division of the United States
District Court for the Northern District of
California, Southern Division.

No. 196—IN EQUITY.

W. S. OVERTON and CARL A. MARTIN,
Complainants,
vs.

PRESIDIO MINING COMPANY, a Corporation,
WM. S. NOYES, B. S. NOYES, L. OS-
BORN, JOHN W. F. PEAT, and L. M.
DOHERTY,
Defendants.

**Order Allowing Appeal from "Order Confirming
Fourth and Final Report and Account of Re-
ceiver, and Allowing Compensation to Said
Receiver and His Attorney," Made, Entered
and Filed in the Above-entitled Cause and
Court on September 29, 1921, and Fixing
Amount of Bond.**

This day came Presidio Mining Company, a cor-
poration, Wm. S. Noyes, B. S. Noyes, L. Osborn,
John W. F. Peat, and L. M. Doherty, defendants in
the above-entitled action, appearing by R. T. Hard-
ing, Esquire, and Henry E. Monroe, Esquire, their
solicitors of record, and presented their petition for
an appeal from that certain order entitled "Order
Confirming Fourth and Final Report and Account
of Receiver, and Allowing Compensation to Said
Receiver and His Attorney," made, entered and

filed in the above-entitled cause and court on September 29, 1921, and their assignment [410] of errors accompanying the said petition, which said petition, upon due consideration, is hereby allowed, and an appeal from the aforesaid order is hereby allowed to the United States Circuit Court of Appeals for the Ninth Circuit, upon the filing of a bond in the sum of Five Hundred (500) Dollars, with good and sufficient surety to be approved by the court; and it is hereby further ordered that a complete transcript of all records, proceedings and papers upon which the aforesaid order was based, duly authenticated, be certified and sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 27th day of March, 1922.

WM. C. VAN FLEET,
Judge of Said Court.

[Endorsed]: Filed Mar. 27, 1922. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [411]

(Title of Court and Cause.)

Cost Bond on Appeal from "Order Confirming Fourth and Final Report and Account of Receiver, and Allowing Compensation to Said Receiver and His Attorney," Made, Entered and Filed in Said Cause and Court on September 29, 1921.

WHEREAS, the above-named Presidio Mining Company, a corporation, Wm. S. Noyes, B. S.

Noyes, L. Osborn, John W. F. Peat and L. M. Doherty, have prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse that certain order entitled "Order Confirming Fourth and Final Report and Account of Receiver, and Allowing Compensation to said Receiver and his Attorney," made, entered and filed in said cause and court on September 29, 1921;

NOW, THEREFORE, in consideration of the premises, the undersigned, National Surety Company, a corporation, duly organized and existing under the laws of the State of New York, and duly authorized and licensed by the laws of the State of California to do a general surety business in the State of California, does hereby undertake and promise on the part of said defendants, Presidio Mining Company, a corporation, Wm. S. Noyes, B. S. Noyes, L. Osborn, John W. F. Peat, and L. M. Doherty, that said defendants will prosecute their said appeal to effect and answer all costs if they fail to make good their plea and appeal, not exceeding the sum of Five Hundred (\$500) Dollars to which amount it acknowledges itself justly bound. [412]

Dated at San Francisco, California, this 27th day of March, A. D. 1922.

[Seal] NATIONAL SURETY COMPANY,

By F. J. CRISP,

Resident Vice-President.

By A. C. ROBESON,

Resident Assistant Secretary.

Approved this 27th day of March, 1922.

WM. C. VAN FLEET,
Judge of the Above-entitled Court.

[Endorsed]: Filed Mar. 27, 1922. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [413]

In the District Court of the United States, in and
for the Northern District, Southern Division,
Second Division.

IN EQUITY—No. 196.

W. S. OVERTON and CARL A. MARTIN,
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,
WM. S. NOYES, B. S. NOYES, L. OS-
BORN, JOHN W. F. PEAT and L. M.
DOHERTY,

Defendants.

**Defendants' Praecept on Appeal From Order Con-
firming Fourth and Final Report and Account
of Receiver, and Allowing Compensation to
Said Receiver and His Attorney.**

To the Clerk of the Above-entitled Court:

Sir: You will please prepare transcript of
record in the above-entitled cause, to be in the
office of the Clerk of the United States Circuit
Court of Appeals for the Ninth Judicial Circuit,
pursuant to the appeal heretofore allowed herein

and perfected to said Court from the "Order Confirming Fourth and Final Report and Account of Receiver and Allowing Compensation to said Receiver and His Attorney" and decree of said Court, and include in said transcript the following pleadings, proceedings and papers on file, to wit: [414]

- (1) Order of the Hon. Wm. H. Hunt, United States Circuit Judge, and One of the Judges of the United States Circuit Court of Appeals, for the Ninth Circuit, Made in the Matter of This Appeal on the 20th Day of April, 1922, a Copy of Which is Hereto Attached and Made a Part of This Praeceptum.
- (2) The First Report and Account of the Receiver Herein. Filed Nov. 2, 1918.
- (3) The Supplement to Said First Report and Account of Said Receiver. Filed Dec. 28, 1918.
- (4) Stipulation Allowing Fees of Receiver and His Attorney, and Order Attached Thereto. Filed Dec. 11, 1918.
- (5) Second Report and Account of the Receiver. Filed Dec. 10, 1919.
- (6) Defendants' Objections to Receiver's Second Account. Filed Dec. 22, 1919.
- (7) Order Allowing and Confirming Said Second Account of Said Receiver. Made Jan. 13, 1920.
- (8) Third Report and Account of the Receiver Herein. Filed Nov. 30, 1920.

- (9) Objections of Defendants to the Allowance of, and to Settlement of, Receiver's Account. Filed Dec. 4, 1920.
- (10) Order Allowing and Confirming Said Third Report and Account of Said Receiver. Filed Dec. 4, 1920.
- (11) Mandate of the United States Circuit Court of Appeals, and Order Directing Same to be Spread on the Minutes of This Court Made and Filed May 6, 1921.
- (12) Order Allowing Receiver to Deliver Possession of Property in Advance of Final Discharge.
- (13) Fourth and Final Report and Account of Receiver.
- (14) Defendants' Exceptions and Objections to Said Fourth and Final Report and Account of Receiver. Filed June 3, 1921. [415]
- (15) Memorandum Opinion of Court on Overruling Defendants' Objections and Exceptions to Said Account of Receiver. Filed Sept. 28, 1921.
- (16) Order Overruling Defendants' Objections and Exceptions to Receiver's Fourth and Final Account, and Confirming Said Account of Receiver, and Allowing Fees to Said Receiver and His Attorney.
- (17) Supplemental Account of Said Receiver.
- (18) Defendants' Petition for Appeal From Order Confirming Fourth and Final Report of Receiver.

- (19) Defendants' Assignments of Error on Appeal From Said Last-Mentioned Order.
- (20) Cost Bond on Appeal From Said Last-Mentioned Order.
- (21) Citation on Appeal From Said Last-Mentioned Order.
- (22) Order Allowing Appeal From Said Last-Mentioned Order and Fixing Bond on Appeal.
- (23) This Praecipe.
- (24) Affidavit of R. T. Harding of Service of Citation on Walter B. Maling, Receiver.

Said transcript to be prepared as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit and filed in the office of the Clerk of the United States Circuit Court of Appeals, on or before the 26th day of June, 1922, in accordance with the stipulation and order, a copy of which is hereto annexed. [416]

Dated at San Francisco, California, this 27th day of April, A. D. 1922.

PRESIDIO MINING COMPANY.

WM. S. NOYES,
B. S. NOYES,
L. OSBORN,
JOHN W. F. PEAT,
L. M. DOHERTY,

Said Defendants and Appellants Herein.

By R. T. HARDING and
HENRY E. MONROE,

Their Solicitors.

J. J. DUNNE,

Of Counsel. [417]

In the United States Circuit Court of Appeals, for
the Ninth Circuit.

No. — .

PRESIDIO MINING COMPANY, a Corporation,
WM. S. NOYES, B. S. NOYES, JOHN W.
F. PEAT, and L. M. DOHERTY,
Defendants and Appellants,
vs.

W. S. OVERTON and CARL A. MARTIN,
Complainants and Appellees.

**Stipulation as to Printing of Record on Appeal
(Copy)**

IT IS HEREBY STIPULATED by and
between the parties in the above-entitled cause
and Walter B. Maling, the Receiver in the above-
entitled cause, which cause is in Equity—No. 196,
in the District Court of the United States, for the
Southern District of California, Northern Division,
that in the matter of the appeal of the above-named
defendants and appellants from “Order Confirming
Fourth and Final Report and Account of Receiver,
and Allowing Compensation to said Receiver and
His Attorney,” given and made in said District
Court on September 29, 1921, and filed in said
cause, in said District Court, and with the Clerk
of said Court on September 29, 1921, that none of
the pleadings, papers, or matters printed and con-
tained in the Transcript of Record in this cause
in the former appeal herein, being No. 3253 in this

Court, need be included in, or printed in the Transcript of Record on this Appeal: but that all pleadings, papers, and matters printed in the Transcript of Record on said former appeal, No. 3253, in this court, [418] may be referred to and used on this appeal with the same force and effect as if the same were printed in the Transcript of Record on this Appeal.

Dated this 19th day of April, A. D. 1922.

R. T. HARDING and

HENRY E. MONROE,

Solicitors for Defendants and Appellants.

J. J. DUNNE,

Of Counsel.

WM. F. ROSE,

Solicitor for Complainants and Appellees.

FRANK R. WEHE,

Formerly Solicitor for said Receiver.

It is so ordered.

Dated April 20, A. D. 1922.

W. H. HUNT,

United States Circuit Judge. [419]

In the United States Circuit Court of Appeals, for
the Ninth Circuit.

PRESIDIO MINING COMPANY, a Corporation,
WM. S. NOYES, B. S. NOYES, JOHN W.
F. PEAT, and L. M. DOHERTY,

Defendants and Appellants,

vs.

W. S. OVERTON and CARL A. MARTIN,
Complainants and Appellees.

**Stipulation and Order Enlarging Time to File
Transcript of Record on Appeal and to Docket
Said Cause in the Matter of the Appeal from
"Order Confirming Fourth and Final Report
and Account of Receiver, and Allowing Com-
pensation to Said Receiver and His Attorney,"
Given and Made in Said Cause on September
29, 1921, Which Said Cause is No. 196 in Equity,
in the Southern Division of the United States
District Court of the Northern District of Cali-
fornia, Southern Division.**

IT IS HEREBY STIPULATED by and be-
tween the respective parties, as follows, to wit:

That the return day of the citation on the above-
mentioned appeal to the United States Circuit Court
of Appeals for the Ninth Circuit, in the above-men-
tioned suit, be, and the same is, hereby enlarged
and extended up to and including the 26th day of
June, 1922, and that the defendants and appellants
may have to and including the 26th day of June,
1922, in which to file in the office of the Clerk of the

above-entitled court their Transcript of the Record on Appeal, and to docket said cause in said court; appellees, however, [420] not admitting that the appellants have any right af appeal from said order, and reserving the right to move to dismiss said appeal.

Dated this — day of April, 1922.

R. T. HARDING,
HENRY E. MONROE,

Solicitor for Defendants and Appellants.

J. J. DUNNE,

Of Counsel.

WM. F. ROSE,

Solicitor for Complainants and Appellees.

FRANK R. WEHE,

Formerly Solicitor for Receiver.

Upon reading the foregoing stipulation, IT IS HEREBY ORDERED that the return day of the citation on the above-mentioned appeal to the United States Circuit Court of Appeals for the Ninth Circuit, in the above-mentioned suit, be, and the same is, hereby enlarged and extended up to and including the 26th day of June, A. D. 1922, and that defendants and appellants may have to and including the 26th day of June, 1922, in which to file in the office of the Clerk of this court their Transcript of the Record on Appeal, and to docket said cause in this court.

Dated this 21st day of April, 1922.

W. H. HUNT,

United States Circuit Judge. [421]

Due service of a copy of the within praecipe is hereby admitted this 29th day of April, 1922.

WM. F. ROSE,

Solicitor for Complainants.

FRANK R. WEHE,

Formerly Solicitor for Receiver.

[Endorsed]: Filed May 1, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.
[422]

(Title of Court and Cause.)

**Complainants' Praecipe on Defendants' Appeal
From Order Confirming Fourth and Final Report and Account of Receiver, and Allowing
Compensation to Said Receiver and His
Attorney.**

To the Clerk of the Above-entitled Court:

SIR: In connection with defendants' appeal above indicated, please prepare complainants' suggested documents herein indicated to be used and made a part of the record in the United States Circuit Court of Appeals for the Ninth Judicial Circuit and prepare a transcript of record to include the following:

1. Motion for Injunction and Receivership, Dated Oct. 5, 1915. Filed Oct. 7, 1915.
2. Affidavits W. S. Overton Dated July 26, and 27, 1915. Filed —, 1915.
3. Supplemental Affidavits W. S. Overton, Dated Oct. 4 and 6, 1915, and Affidavits F. H. Gar-

- diner and E. A. Herger, Dated Dec. 4 and 6, 1915. Filed Dec. 6, 1915.
4. Reply Affidavit W. S. Noyes, Dated Dec. 16, 1915, and Reply Affidavit B. S. Noyes, Dated Dec. 16, 1915. Filed Dec. 16, 1915.
5. Memorandum Court Minute Order Dec. 28, 1915, Ordering Injunction Denying Receivership Without Prejudice. Filed Dec. 28, 1915.
6. Motion for Order to Inspect Books and Records: and Affidavit of W. S. Overton in Support of [423] motion. Filed Jan. 25, 1916.
7. Order to Inspect Books and Records. Filed Feb. 11, 1916.
8. Motion for Temporary Injunction Supporting Affidavits, Temporary Restraining Order. Filed Oct. 26, 1916.
9. Injunction and Bond on Same, Restraining Transfer of Stock. Filed Dec. 11, 1916.
10. Bond on Appointment of Receiver on Behalf of Complainants. Filed Feb. 20, 1918.
11. Complainants' Answer to Defendants' Exceptions and Objections to Fourth and Final Report and Account of Receiver. Filed June 30, 1921.
12. Stipulation Re Employment F. C. Handy and Miss Florence Handy, Signed by Complainants and Defendants (Affidavit Mr. Maling). Filed Aug. 5, 1921.
13. Stipulation and Letter by R. T. Harding, Esq., to Judge Van Fleet with Authority that W. B. Maling is Qualified to Act as Receiver and

Suggested Same on Behalf of Defendants.
Filed Feb. —, 1918.

14. Order to Invest \$50,000 Liberty Bonds and \$10,000 Liberty Bonds by Receiver. Filed Apr. 8, 1918.
15. Petition, Stipulation and Order for New Engine. Filed June 3, 1918.
16. Petition for Audit Filed by Receiver. Filed Dec. 2, 1918.
17. Order to Employ Auditor. Filed Jan. 13, 1919.
18. Stipulation Inviting Judge to Visit Mine. Filed Feb. 27, 1919. [424]
19. T. W. Thompson's Report for 1920, Submitted to Receiver's Attorney and Receiver. Filed Nov. —, 1920.
20. Report of Haskins & Sells. Filed —, 1919.
21. Report of the Master in Chancery on Accounting. Filed Nov. 30, 1918.
22. This Praecipe.

Said transcript to be prepared as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and filed in the office of the Clerk of the United States Circuit Court of Appeals as required by law in such cases made and provided.

Dated: San Francisco, Cal., May 4, 1922.

W. S. OVERTON and
CARL A. MARTIN,
Complainants and Appellees Herein.
By WM. F. ROSE,
Their Solicitor.

CHARLES CLYDE SPICER,
Of Counsel.

Copy of within praecipe received this 5th day of
May, 1922.

R. T. HARDING and
HENRY E. MONROE,
Attorneys for Defendants.
FRANK R. WEHE,
By C. R. JOHNSON,
Formerly Attorney for Receiver.

[Endorsed]: Filed May 5, 1922. Walter B.
Maling, Clerk. [425]

(Title of Court and Cause.)

**Affidavit of R. T. Harding on Service of Citation
on Appeal.**

State of California,
City and County of San Francisco,—ss.

R. T. Harding, being duly sworn, deposes and
says:

That he is one of the solicitors for the defendants
in the above-entitled cause:

That on the 28th day of March, 1922, he served
the "Citation on Appeal from 'Order Confirming

Fourth and Final Report and Account of Receiver and Allowing Compensation to said Receiver and His Attorney,' made, entered and filed in the above-entitled cause and court on September 29, 1921'' (which said citation was made and issued in the above-entitled cause and court by the Hon. Wm. C. Van Fleet, the Judge of said court, on the 27th day of March, 1922), on Walter B. Maling, Receiver in the above-entitled cause, on the 28th day of March, 1922, in the manner following:

The said Walter B. Maling was absent from his office in the United States Post Office Building in the City and County of San Francisco, State of California, on said 28th day of March, 1922, but on said day the said Walter B. Maling was at the City of Sacramento, in said State, and this affiant made service of said Citation upon him by delivering to and leaving with J. A. Schaertzer, the person then in charge of the office of the said Walter B. Maling, a full, true and correct copy of said Citation, and by exhibiting to the said J. A. Schaertzer, the original citation: and this affiant also made service of said Citation upon the said Walter B. Maling by [426] leaving a full, true and correct copy of said Citation at the residence of the said Walter B. Maling, at No. 1001 Pine Street, in the city and county of San Francisco, on said 28th day of March, 1922, between the hours of eight in the morning and six in the evening, by delivering to and leaving with Dorothy Maling, a person of not less than eighteen years of age, said copy of said Citation. That at

said time the said Dorothy Maling was the only person at and in charge of said residence.

Affiant further states that he also served said citation upon the said Walter B. Maling, by depositing in the United States postoffice, a full, true and correct copy of said Citation, on said 28th day of March, 1922; that said copy of said Citation was enclosed in an envelope with postage prepaid thereon and addressed to the said Walter B. Maling, No. 1001 Pine Street, San Francisco, California.

That this affiant did also, on said 28th day of March, 1922, at the city and County of San Francisco, state of California, serve said Citation upon Frank R. Wehe, the attorney for said Receiver in the above-entitled cause, by delivering to and leaving with the said Frank R. Wehe, personally, a full, true and correct copy of said Citation, and by exhibiting to him the original Citation.

That said Frank R. Wehe declined to admit due service and receipt of a copy of the said Citation as the attorney of said Receiver, but in lieu thereof indorsed on said original Citation the following: "Received a copy of the within Citation is hereby admitted this 28th day of March, A. D. 1922." (Signed) "Frank R. Wehe, Attorney for Receiver during all the times up to time of his discharge."

R. T. HARDING.

Subscribed and sworn to before me this 28th day of March, A. D. 1922.

[Seal]

M. A. BRUSIE,
Notary Public in and for the City and County of
San Francisco, State of California. [427]

[Endorsed]: Filed Mar. 28, 1922. W. B. Mal-
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.
[428]

(Title of Court and Cause.)

**Certificate of Clerk U. S. District Court to Tran-
script of Record.**

I, WALTER B. MALING, Clerk of the District
Court of the United States, in and for the Northern
District of California, do hereby certify the fore-
going four hundred twenty-eight (428) pages,
numbered from 1 to 428, inclusive, to be a full,
true and correct copy of the record and pro-
ceedings as enumerated in the praecipe for record
on appeal, as the same remain on file and of record
in the above-entitled cause, in the office of the clerk
of said court, and that the same constitutes the
record on appeal to the United States Circuit Court
of Appeals, for the Ninth Circuit.

I further certify that the cost of the foregoing
transcript of record is \$206.00; that said amount
was paid by the defendants; and that the original
Citation issued in said cause is hereto annexed.

IN WITNESS WHEREOF, I have hereunto set
my hand and affixed the seal of said District Court
this 22d day of July, A. D. 1922.

[Seal] WALTER B. MALING,
Clerk United States District Court for the Northern
District of California. [429]

In the Southern Division of the United States District Court for the Northern District of California, Southern Division.

No. 196—IN EQUITY.

W. S. OVERTON and CARL A. MARTIN,
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,
WM. S. NOYES, B. S. NOYES, L. OS-
BORN, JOHN W. F. PEAT, and L. M.
DOHERTY,

Defendants.

Citation on Appeal from "Order Confirming Fourth and Final Report and Account of Receiver, and Allowing Compensation to said Receiver and His Attorney," Made, Entered and Filed in the Above-Entitled Cause and Court on September 29, 1921.

United States of America to W. S. Overton and Carl A. Martin, Complainants Herein, and Wm. F. Rose, Their Solicitor, and to Walter B. Maling, the Receiver Herein, and Frank R. Wehe, Attorney for the Receiver:

You are hereby notified that in the above-entitled cause an appeal has been allowed the defendants Presidio Mining Company, a corporation, Wm. S. Noyes, B. S. Noyes, L. Osborn, John W. F. Peat, and L. M. Doherty, to the United States Circuit Court of Appeals for the Ninth Circuit from that

certain order entitled "Order Confirming Fourth and Final Report and Account of Receiver, and Allowing Compensation [430] to said Receiver and His Attorney," given, made, entered and filed in the above-entitled cause and court on September 29, 1921.

You are hereby cited and admonished to be and appear in said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, in the State of California, thirty days after the date of this citation, to show cause, if any there be, why said order appealed from should not be corrected and speedy justice done the parties in that behalf.

Dated, San Francisco, March 27th, 1922.

WM. C. VAN FLEET,
Judge of Said Court.

[Endorsed]: No. 196—In Equity. In the Southern Division of the United States District Court for the Northern District of California, Southern Division. W. S. Overton and Carl A. Martin, Complainants, vs. Presidio Mining Company, a Corporation, et als., Defendants. Citation on Appeal from "Order Confirming Fourth and Final Report and Account of Receiver, and Allowing Compensation to said Receiver," etc. Filed Mar. 28, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

Due service and receipt of a copy of the within Citation is hereby admitted this 27th day of March, A. D. 1922.

WM. F. ROSE,
Solicitor for Complainants.

Receipt of a copy of the within citation is hereby admitted this 28th day of March, A. D. 1922.

FRANK R. WEHE,
Attorney for Receiver During All Times Up to
Time of His Discharge.

[Endorsed]: No. 3896. United States Circuit Court of Appeals for the Ninth Circuit. Presidio Mining Company, a Corporation, Wm. S. Noyes, B. S. Noyes, L. Osborn, John W. F. Peat, and L. M. Doherty, Appellants, vs. W. S. Overton and Carl A. Martin, Appellees. Transcript of Record. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Southern Division.

Filed July 22, 1922.

F. D. MONCKTON,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Circuit Court of Appeals, for
the Ninth Circuit.

No.—.

PRESIDIO MINING COMPANY, a Corporation,
WM. S. NOYES, B. S. NOYES, JOHN F.
W. PEAT, and L. M. DOHERTY,

Defendants and Appellants,

vs.

W. S. OVERTON and CARL A. MARTIN,
Complainants and Appellees.

**Stipulation as to Printing of Record on Appeal
(Original).**

IT IS HEREBY STIPULATED by and between the parties in the above-entitled cause and Walter B. Maling, the Receiver in the above-entitled cause, which cause is in Equity, No. 196, in the District Court of the United States, for the Southern District of California, Northern Division, that in the matter of the appeal of the above-named defendants and appellants from "Order Confirming Fourth and Final Report and Account of Receiver, and Allowing Compensation to said Receiver and His Attorney," given and made in said District Court on September 29, 1921, and filed in said cause, in said District Court, and with the Clerk of said court on September 29, 1921, that none of the pleadings, papers, or matters printed and contained in the Transcript of Record in this cause in the former appeal herein, being No. 3253 in this court, need be included in, or printed in the Transcript of Record on this Appeal; but that all pleadings, papers, and matters printed in the Transcript of Record on said former appeal, No. 3253, in this court, may be referred to and used on this appeal with the same force and effect as if the same were printed in the Transcript of Record on this Appeal.

Dated this 19th day of April, A. D. 1922.

R. T. HARDING and
HENRY E. MONROE,

Solicitors for Defendants and Appellants.

J. J. DUNNE,
Of Counsel.

WM. F. ROSE,
Solicitor for Complainants and Appellees.
FRANK H. WEHE,
Former Solicitor for said Receiver.

It is so ordered.

Dated April 20, A. D. 1922.

W. H. HUNT,
United States Circuit Judge.

[Endorsed]: No. 3896. In the United States Circuit Court of Appeals, for the Ninth Circuit. Presidio Mining Company, a Corporation, et al., Defendants and Appellants, vs. W. S. Overton et al., Complainants and Appellees. Stipulation as to Printing of Record on Appeal. Filed Apr. 21, 1922. F. D. Monckton, Clerk. Refiled Jul. 22, 1922. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for
the Ninth Circuit.

PRESIDIO MINING COMPANY, a Corporation,
WM. S. NOYES, B. S. NOYES, JOHN W.
F. PEAT, and L. M. DOHERTY,
Defendants and Appellants,
vs.

W. S. OVERTON and CARL A. MARTIN,
Complainants and Appellees.

Stipulation and Order Extending Time to and Including June 26, 1922, to File Record and Docket Cause.

STIPULATION AND ORDER ENLARGING TIME TO FILE TRANSCRIPT OF RECORD ON APPEAL AND TO DOCKET SAID CAUSE IN THE MATTER OF THE APPEAL FROM "ORDER CONFIRMING FOURTH AND FINAL REPORT AND ACCOUNT OF RECEIVER, AND ALLOWING COMPENSATION TO SAID RECEIVER AND HIS ATTORNEY," GIVEN AND MADE IN SAID CAUSE ON SEPTEMBER 29, 1921, WHICH SAID CAUSE IS NO. 196 IN EQUITY, IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT OF THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

IT IS HEREBY STIPULATED by and between the respective parties, as follows, to wit:

That the return day of the citation on the above-mentioned appeal to the United States Circuit Court of Appeals for the Ninth Circuit, in the above-mentioned suit, be, and the same is, hereby enlarged and extended up to and including the 26th day of June, 1922, and that the defendants and appellants may have to and including the 26th day of June, 1922, in which to file in the office of the Clerk of the above-entitled court their Transcript of the Record on Appeal, and to docket said cause

in said Court; appellees, however, not admitting that the appellants have any right of appeal from said order, and reserving the right to move to dismiss said appeal.

Dated this 21st day of April, 1922.

R. T. HARDING and

HENRY E. MONROE,

Solicitors for Defendants and Appellants.

J. J. DUNNE,

Of Counsel.

WM. F. ROSE,

Solicitor for Complainants and Appellees.

FRANK R. WEHE,

Former Solicitor for Receiver.

Order.

Upon reading the foregoing stipulation, IT IS HEREBY ORDERED that the return day of the citation on the above-mentioned appeal to the United States Circuit Court of Appeals for the Ninth Circuit, in the above-mentioned suit, be, and the same is, hereby enlarged and extended up to and including the 26th day of June, A. D. 1922, and that defendants and appellants may have to and including the 26th day of June, 1922, in which to file in the office of the Clerk of this Court their Transcript of the Record on Appeal, and to docket said cause in this court.

Dated this 21st day of April, 1922.

W. H. HUNT,

United States Circuit Judge.

[Endorsed]: 3896. In the United States Circuit Court of Appeals, for the Ninth Circuit. Presidio

Mining Company, a Corporation, et al., Defendants and Appellants, vs. W. S. Overton and Carl A. Martin, Complainants and Appellees. Stipulation and Order Enlarging Time to File Transcript of Record on Appeal and to Docket Cause, etc. Filed Apr. 21, 1922. F. D. Monckton, Clerk. Re-filed Jul. 22, 1922. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for
the Ninth Circuit.

PRESIDIO MINING COMPANY, a Corporation,
WM. S. NOYES, B. S. NOYES, JOHN W.
F. PEAT, and L. M. DOHERTY,
Defendants and Appellants,
vs.

W. S. OVERTON and CARL A. MARTIN,
Complainants and Appellees.

**Order Enlarging Time to and Including August 26,
1922, to File Record and Docket Cause.**

ORDER ENLARGING TIME TO FILE TRAN-
SCRIPT OF RECORD ON APPEAL AND
TO DOCKET SAID CAUSE IN THE MAT-
TER OF THE APPEAL FROM "ORDER
CONFIRMING FOURTH AND FINAL RE-
PORT AND ACCOUNT OF RECEIVER,
AND ALLOWING COMPENSATION TO
SAID RECEIVER AND HIS ATTORNEY,"
GIVEN AND MADE IN SAID CAUSE ON
SEPTEMBER 29, 1921, WHICH SAID

CAUSE IS NO. 196 IN EQUITY, IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT OF THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

Good cause appearing, IT IS HEREBY ORDERED that the return day of the Citation on the above-mentioned appeal to the United States Circuit Court of Appeals for the Ninth Circuit, in the above-mentioned suit, be, and the same is, hereby enlarged and extended up to and including the 26th day of August, 1922, and that defendants and appellants may have to and including the 26th day of August, 1922, in which to file in the office of the Clerk of this Court their Transcript of the Record on Appeal, and to docket said cause in this court.

Dated this 24th day of June, 1922.

W. H. HUNT,

United States Circuit Judge.

[Endorsed]: 3896. In the United States Circuit Court of Appeals, for the Ninth Circuit. Presidio Mining Company, a Corporation, et al., Defendants and Appellants, vs. W. S. Overton, et al., Complainants and Appellees. Order Enlarging Time to File Transcript of Record and Docket Cause on Appeal. Filed Jun. 24, 1922. F. D. Monckton, Clerk. Re-filed Jul. 22, 1922. F. D. Monckton, Clerk.